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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

JUN 27 2016

DOUG LITTLE – Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

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IN THE MATTER OF THE PROPOSED
AMENDMENTS TO THE PIPELINE SAFETY
RULES A.A.C. R14-5-202, R14-5-203, R14-5-204,
R14-5-205, AND R14-5-207.

DOCKET NO. RG-00000A-15-0098

DECISION NO. 75604

ORDER

Open Meeting
June 14 and 15, 2016
Phoenix, Arizona

BY THE COMMISSION:

This matter concerns a rulemaking to modify Arizona Administrative Code (“A.A.C.”) Title 14, Chapter 5, Article 2, the Arizona Corporation Commission (“Commission”) rules for Pipeline Safety, by amending A.A.C. R14-5-202, R14-5-203, R14-5-204, R14-5-205, and R14-5-207. The rule revisions at issue are currently in effect through a Notice of Emergency Rulemaking (“NERM”), effective from December 15, 2015, through June 12, 2016, for which renewal until December 9, 2016, under A.R.S. § 41-1026, is currently pending before the Office of the Attorney General (“AG”). The revisions have also been proposed for adoption on a permanent basis through a Notice of Proposed Rulemaking (“NPRM”) published in the *Arizona Administrative Register* on May 15, 2015, and a Notice of Supplemental Proposed Rulemaking (“NSPRM”) published in the *Arizona Administrative Register* on December 11, 2015. This Decision addresses whether the proposed rule revisions should be adopted on a permanent basis as final rules. The primary purpose of the rule revisions is to keep the Commission’s Pipeline Safety rules in compliance with federal grant requirements by updating the rules’ incorporations by reference of various parts of Title 49 of the Code of Federal Regulations (“49 CFR”) and associated forms. The other revisions to the rules were designed to make the rules more clear, concise, understandable, and effective in ensuring pipeline safety. The revisions include, in R14-5-202(T), a more stringent standard for the testing

1 of pipeline welds performed at a liquefied natural gas ("LNG") facility.

2 * * * * *

3 Having considered the entire record herein and being fully advised in the premises, the
4 Commission finds, concludes, and orders that:

5 **FINDINGS OF FACT**

6 **Procedural History**

7 1. On March 24, 2015, the Commission's Legal Division ("Legal") filed a memorandum
8 requesting, on behalf of the Commission's Safety Division ("Staff"), that a docket be opened for the
9 purpose of proposing amendments to the Pipeline Safety rules, A.A.C. R14-5-202, R14-5-203, R14-5-
10 204, and R14-5-207. As a result, the above-captioned docket was opened.

11 2. On March 31, 2015, Staff issued a memorandum describing Staff's recommended
12 modifications to the Pipeline Safety rules and including a proposed order for Commission consideration
13 at the Open Meeting of April 14 and 15, 2015. In the proposed order, Staff recommended that the
14 Commission commence the formal rulemaking process by filing a Notice of Rulemaking Docket
15 Opening ("NRDO") and an NPRM with the Office of the Secretary of State for publication in the
16 *Arizona Administrative Register*. The proposed order provided the text of Staff's recommended rule
17 modifications and Staff's recommended schedule for the rulemaking process.

18 3. On April 13, 2015, Staff filed Safety Division Proposed Amendment No. 1 ("Staff
19 Amendment No. 1"). Staff Amendment No. 1 added a minor proposed amendment to A.A.C. R14-5-
20 205, corrected typographical errors, and revised the recommended schedule for the rulemaking process.

21 4. At the Commission's Open Meeting on April 13, 2015, the Commission approved the
22 proposed order, as amended by Staff Amendment No. 1.

23 5. On April 15, 2015, Staff filed a Notice of Errata stating that the caption for this matter
24 should include R14-5-205. The Commission's Docket Control Center revised the caption accordingly.

25 6. On April 23, 2015, Decision No. 75023¹ was issued, directing Staff to prepare and file
26 with the Office of the Secretary of State, for publication in the *Arizona Administrative Register* no later
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28 ¹ Official notice is taken of this decision.

1 than May 15, 2015, an NRDO and an NPRM including the text of Staff's recommended rule
2 modifications as included in the Decision. The Decision also required that an oral proceeding on the
3 NPRM be held in Phoenix on June 18, 2015; established dates for the submission of comments; and
4 established other procedural deadlines and requirements.

5 7. On April 27, 2015, Staff filed Notice of Filing Staff Suggested Service List, including
6 a list of stakeholders Staff believed appropriate to include on the service list for this matter.

7 8. On May 15, 2015, the NRDO and NPRM were published in the *Arizona Administrative*
8 *Register*.

9 9. On June 18, 2015, an oral proceeding for this matter was held before a duly authorized
10 Administrative Law Judge of the Commission at the Commission's offices in Phoenix, Arizona. Staff
11 appeared through counsel. Robert Miller, then Pipeline Safety Supervisor,² provided a statement
12 explaining and supporting the rulemaking. No members of the public attended to provide oral
13 comment.

14 10. No members of the public provided written comments on the NPRM.

15 11. On July 8, 2015, Staff filed an Economic, Small Business, and Consumer Impact
16 Statement ("EIS"), along with a copy of the published NPRM.

17 12. On July 10, 2015, a Recommended Opinion and Order ("ROO") was issued by the
18 Commission's Hearing Division, for consideration at the Open Meeting of August 18 and 19, 2015.
19 The ROO recommended that the proposed rules be adopted, with clarifications to the date parenthetical
20 for the 49 CFR Parts incorporated by reference in R14-5-202(B) and the date parenthetical for a U.S.
21 Department of Transportation Pipeline and Hazardous Material Safety Administration ("PHMSA")
22 form referenced in R14-5-204(A)(2). Because the clarifications did not change the persons affected by
23 the rules, the subject matter of the rules, the issues determined by the rules, or the effects of the rules,
24 the ROO found that the clarifications did not constitute a substantial change under A.R.S. § 41-1025.

25 13. At the Open Meeting on August 18, 2015, the Commission considered and approved
26 the ROO.

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28 ² Mr. Miller retired in May 2016.

1 14. On August 26, 2015, Decision No. 75250³ was issued, directing Staff to prepare and file
 2 a Notice of Final Rulemaking ("NFRM") packet with the AG for certification under A.R.S. § 41-1044.
 3 The Decision required Staff to include, in the NFRM's Preamble, language demonstrating the need for
 4 an immediate effective date for the rulemaking as provided under A.R.S. § 41-1032.

5 15. On September 16, 2015, Staff filed a memorandum showing that the NFRM packet had
 6 been filed with the AG.

7 16. Subsequent to the filing of the NFRM packet, the AG notified Legal that the AG
 8 considered the clarifications to the 49 CFR date parenthetical adopted in Decision No. 75250 to
 9 constitute a substantial change under A.R.S. § 41-1025.⁴ The AG indicated that the Commission could
 10 complete an emergency rulemaking, under A.R.S. § 41-1026, to make the rule changes adopted in
 11 Decision No. 75250 effective pending completion of additional regular rulemaking.

12 **Emergency Adoption of the Rules**

13 17. On October 19, 2015, Staff filed a Staff Proposed Order Approving Emergency
 14 Rulemaking.

15 18. On October 20, 2015, Staff filed Safety Division Proposed Amendment No. 1, written
 16 to replace Staff's original Proposed Order in its entirety.

17 19. On October 20, 2015, at the Commission's Staff Open Meeting, the Commission
 18 approved the Staff Proposed Order, as amended by Safety Division Proposed Amendment No. 1.

19 20. On October 22, 2015, Decision No. 75289⁵ was issued, directing Staff/Legal, by
 20 October 23, 2015, to prepare and file with the AG an Emergency Rulemaking packet conforming to
 21 the requirements of A.R.S. § 41-1001(16), A.R.S. § 41-1026, and A.A.C. R1-1-701; adopting the text
 22 of A.A.C. R14-5-202, R14-5-203, R14-5-204, R14-5-205, and R14-5-207 as revised in Exhibit B to
 23 Decision No. 75250; including a copy of Decision No. 75289 along with any additional documentation
 24 required by the AG for approval under A.R.S. § 41-1026; and making the rule revisions therein
 25 effective immediately upon filing with the Office of the Secretary of State.

27 ³ Official notice is taken of this decision.

28 ⁴ The Commission does not agree with this determination.

⁵ Official notice is taken of this decision.

21. On October 22, 2015, Staff/Legal filed an Emergency Rulemaking packet with the AG. A copy of the Emergency Rulemaking packet was filed in the docket on October 23, 2015.

22. On December 15, 2015, the AG filed the NERM with the Office of the Secretary of State, making the rule revisions approved in Decision No. 75289 effective on an emergency basis for a period of 180 days (until June 12, 2016), as provided in A.R.S. § 41-1026(D). The NERM was published in the *Arizona Administrative Register* on January 1, 2016. A copy of the NERM is attached hereto and incorporated herein as Exhibit 1.

23. On April 20, 2016, Staff/Legal filed a Staff Proposed Order Approving Renewal of Emergency Rulemaking. The Staff Proposed Order recommended that the Commission approve a request for renewal of the rule revisions adopted through the NERM, to extend the effectiveness of the rule revisions made through the NERM for another 180 days.

24. At the Open Meeting on May 3, 2016, the Commission approved the Staff Proposed Order.

25. On May 5, 2016, Decision No. 75533⁶ was issued, directing Staff/Legal to prepare and file with the AG, by May 6, 2016, a request for renewal of the rule revisions adopted through the NERM, along with a NERM (Renewal) and any additional documentation required by the AG for approval of the renewal or required by the Office of the Secretary of State for publication in the *Arizona Administrative Register*. The Decision further ordered Staff/Legal to prepare the documents and take the actions necessary to ensure that, upon receiving approval of the renewal from the AG, the NERM (Renewal) is filed with the Office of the Secretary of State for publication in the *Arizona Administrative Register* as required by A.R.S. § 41-1026(D)(6).

26. Upon AG approval of the NERM (Renewal), the rule revisions will become effective for an additional 180 days, until December 9, 2016.

Supplemental Proposed Rulemaking

27. On October 28, 2015, due to the AG's determination as to the NFRM, the Hearing Division issued a Recommended Order recommending the filing of an NSPRM, under A.R.S. § 41-

⁶ Official notice is taken of this decision.

1 1022(E), to propose the same rule revisions as temporarily adopted through the NERM.

2 28. At the Open Meeting on November 6, 2015, the Commission approved the
3 Recommended Order.

4 29. On November 25, 2015, Decision No. 75339⁷ was issued, directing Staff to prepare and
5 file with the Secretary of State, by November 27, 2015, an NSPRM package including the NSPRM
6 language attached as Exhibit 1 to Decision No. 75339, conforming to the requirements of A.A.C. R1-
7 1-507, and conforming to any additional Secretary of State requirements for publication. The Decision
8 scheduled an oral proceeding on the NSPRM to be held on January 19, 2016.

9 30. The NSPRM was published in the *Arizona Administrative Register* on December 11,
10 2015. A copy of the NSPRM is attached hereto and incorporated herein as Exhibit 2.

11 31. On January 19, 2016, the oral proceeding was held before a duly authorized
12 Administrative Law Judge of the Commission, with oral comment provided by Spectrum LNG
13 ("Spectrum"), the parent company of Desert Gas, LP ("Desert Gas"), a public service corporation that
14 operates one LNG facility in Arizona.⁸ On the same date, Spectrum filed written comments regarding
15 the NSPRM, specifically concerning its opposition to A.A.C. R14-5-202(T).

16 32. On January 26, 2016, Staff filed responses to Spectrum's comments.

17 33. On January 28, 2016, a Procedural Order was issued requiring Staff, by February 22,
18 2016, to file answers to a set of questions and allowing Spectrum and any other interested person, by
19 March 17, 2016, to file responses to Staff's answers. On February 22, 2016, in response to a Staff
20 request filed that day, a Procedural Order was issued extending the filing deadlines.

21 34. On March 2, 2016, Staff filed its answers to the questions posed in the Procedural Order.

22 35. On March 29, 2016, Spectrum filed responses to Staff's answers.

23 36. On April 1, 2016, a Procedural Order was issued requiring Staff, by April 15, 2016, to
24 file a reply to Spectrum's responses.

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26 ⁷ Official notice is taken of this decision.

27 ⁸ Desert Gas operates an LNG facility in Ehrenberg, Arizona, and was named in a Formal Complaint brought by Staff
28 and ultimately resolved through Decision No. 75301 (October 27, 2015). Official notice is taken of this decision. The
Formal Complaint concerned insufficient nondestructive testing of welds and use of unqualified welders and welding
procedures. (See Decision No. 75301 at 4-6.) To resolve the Formal Complaint, Staff and Desert Gas entered into a
Settlement Agreement, which the Commission approved. (See Decision No. 75301 at 10, Ex. A.)

1 37. On April 15, 2016, Staff filed a Supplemental Staff Reply.

2 **Rationale for the Rulemaking**

3 38. In Decision No. 75289, Findings of Fact No. 20, the Commission found the following:

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5 20. As described in Decision No. 75250, the rationale behind and
6 need for the rule revisions are as follows:³

7 18. In the NPRM Preamble and during the oral
8 proceeding on June 18, 2015, Staff explained that the primary
9 purpose of the rule amendments is to make the Commission's
10 rules consistent with current federal pipeline safety regulations
11 by updating incorporations by reference in the Commission's
12 rules, to ensure that the Commission maintains compliance
13 with the requirements of its intergovernmental agreement with
14 the U.S. Department of Transportation's Pipeline and
15 Hazardous Material Safety Administration ("PHMSA"). This
16 updating includes updates to the incorporations by reference for
17 49 CFR Parts 40, 191, 192, 193, 195, and 199 as well as several
18 PHMSA reporting forms. The secondary purpose of the rule
19 amendments is to clarify the rules.

20 19. Under Title 49, § 60105 of the U.S. Code ("49
21 U.S.C. § 60105"), the Commission holds certification from
22 PHMSA authorizing the Commission to prescribe and enforce
23 safety standards and practices for intrastate pipeline facilities
24 and intrastate pipeline transportation.² (See 49 U.S.C. §
25 60105(a).) To maintain this certification, Staff must annually
26 submit to PHMSA a certification stating, *inter alia*, that the
27 Commission (1) has regulatory jurisdiction over the standards
28 and practices to which the certification applies; (2) has adopted,
by the date of certification, each applicable standard prescribed
under 49 U.S.C. Chapter 601 or, if the standard was prescribed
no later than 120 days before certification, is taking steps to
adopt the standard; and (3) is enforcing each adopted standard
through means including inspections by qualified Commission
employees. (49 U.S.C. § 60105(b).) The certification filing
must also identify the persons subject to the Commission's
safety jurisdiction, describe specific types of reported accidents
or incidents during the past 12 months, provide an investigation
summary for each accident or incident, and describe the
Commission's regulatory and enforcement practices. (49
U.S.C. § 60105(c).) The PHMSA may reject certification for a
state authority if it determines that the state authority is not
satisfactorily enforcing compliance with the applicable federal
safety standards of 49 U.S.C. Chapter 601. (49 U.S.C. §
60105(f).) A state authority that carries out a safety program
pursuant to certification under 49 U.S.C. § 60105 is eligible to
obtain grant funding from PHMSA of up to 80 percent of the
state authority's costs for the personnel, equipment, and
activities reasonably required to carry out the program for the
next calendar year. (49 U.S.C. § 60107(a).) One of the

performance factors considered by PHMSA when determining the allocation of grant funds to a state authority is whether the state has adopted the applicable federal pipeline safety standards. (49 CFR § 198.13(c)(7).) PHMSA can withhold payment if it determines that a state authority is not satisfactorily carrying out its safety program. (49 U.S.C. § 60107(b).)

20. At the oral proceeding on June 18, 2015, Mr. Miller stated that the rulemaking must be effective by December 31, 2015, to comply with PHMSA's deadline. Mr. Miller further stated that the Commission's failure to meet the requirements of the certification program could result in loss of funding for the Commission's Pipeline Safety program. (Tr. at 4-5.)

21. Staff asserted that because the rules at issue are safety rules, it is in the public interest to have the rules in effect and capable of enforcement as soon as possible, and an immediate effective date is justified under A.R.S. § 41-1032(A)(1).

² The Commission has also been authorized to act as an interstate agent under 49 CFR Chapter 601.

³ Decision No. 75250 at 4-5.

39. In addition to the purposes described in the excerpt above, the rule revisions are designed to make the rules more clear, concise, understandable, and effective in ensuring pipeline safety. As stated in the Preamble to the NSPRM, "[t]he Commission's Pipeline Safety rules establish construction and safety standards for gas, [LNG], and hazardous liquid pipeline systems and for master meter systems . . . [and] are designed to protect all residents of and visitors to the State of Arizona by helping to ensure that the handling and transportation of gas, LNG, and hazardous liquids are conducted in the safest manner possible."⁹ It is for the purpose of ensuring that the handling of LNG is conducted in the safest manner possible that the Commission included in the rule revisions the new R14-5-202(T), which states: "An operator of an LNG facility shall ensure that nondestructive testing is completed for each weld performed on newly installed, replaced, or repaired pipeline or an appurtenance. This modifies 49 CFR 193.2303."

40. 49 CFR 193.2303 provides that "[n]o person may place in service any component until it passes all applicable inspections and tests prescribed by this subpart and NFPA-59A-2001

⁹ Decision No. 75533 at Ex. 2 at 1.

(incorporated by reference, *see* § 193.2013).” NFPA 59A § 6.6.3.2 generally requires full radiographic or ultrasonic examination of all circumferential butt welds, but provides exceptions for certain liquid drain and vapor vent piping and for pressure piping operating above -20° F (-29° C), for which 30 percent of each day’s circumferentially welded pipe joints must be nondestructively tested in accordance with ASME B31.3.¹⁰ Rule 202(T) eliminates these exceptions for any pipe welds falling within its scope.

Rulemaking Authority

41. As the Commission previously determined in Decision Nos. 75250, 75289, 75339, and 75533, the Commission has authority to adopt the rule revisions set forth in the NSPRM and NERM pursuant to Article 15, § 3 of the Arizona Constitution and A.R.S. §§ 40-441, 40-202(A), 40-203, 40-321(A), 40-322, and 40-336.¹¹

Administrative Procedure Act Requirements

42. The Commission is an “agency” under the Administrative Procedure Act (“APA”), A.R.S. Title 41, Chapter 6 (A.R.S. §§ 41-1001 through 41-1092.12), and is generally subject to APA requirements.

43. Under A.R.S. § 41-1057, the Commission is exempted from Article 5 of the APA (A.R.S. §§ 41-1051 through 41-1057), pertaining to the Governor’s Regulatory Review Council (“GRRC”), but is required to adopt substantially similar rule review procedures, to include preparation of an EIS and a statement of the effect of the rule on small business.

44. A.R.S. § 41-1044 requires the AG to review rules that are exempt under A.R.S. § 41-1057 and further requires that such rules not be submitted to the Office of the Secretary of State unless first approved by the AG. This requirement does not apply when the Commission is conducting rulemaking pursuant to its exclusive and plenary ratemaking authority under Art. 15, § 3.¹²

¹⁰ See NFPA 59A § 6.6.3.2, included as Attachment A to the Staff Responses to Procedural Order filed on March 2, 2016.

¹¹ See Decision No. 75250 at 5-8; Decision No. 75289 at 7; Decision No. 75339 at 5; Decision No. 75533 at 9.

¹² See *State ex rel. Corbin v. Arizona Corp. Comm’n*, 174 Ariz. 216, 848 P.2d 301 (Ariz. Ct. App. 1992); *Phelps Dodge Corp. v. Arizona Elec. Power Coop.*, 207 Ariz. 95, 83 P.3d 573 (Ariz. Ct. App. 2004).

45. A.R.S. § 40-1030(A) provides that “[a] rule is invalid unless it is made and approved in substantial compliance with sections 41-1021 through 41-1029 and articles 4, 4.1 and 5 of this chapter, unless otherwise provided by law.”

46. A.R.S. § 41-1022(E) provides that if, as a result of public comment or internal review, an agency determines that a proposed rule requires substantial change pursuant to A.R.S. § 41-1025,¹³ the agency shall issue a supplemental notice containing the changes in the proposed rule and shall provide for additional public comment pursuant to A.R.S. § 41-1023.

47. A.R.S. § 41-1024 requires an agency to take one of the following actions on a rulemaking within 120 days after the close of record on the proposed rulemaking: (1) submit the rule to GRRC or the AG for approval, or (2) terminate the rulemaking by publishing a notice in the *Arizona Administrative Register*.

48. The Commission continues to allow for and to consider public comments on an NPRM or an NSPRM during any Open Meeting at which the Commission discusses and votes upon how to proceed regarding the NPRM or NSPRM (*i.e.*, whether to adopt the revisions in an NPRM or NSPRM through an NFRM, to issue an NSPRM, or to terminate rulemaking). Thus, the Commission closes the record on an NPRM or NSPRM, as contemplated by A.R.S. § 41-1024, only after conclusion of the last Open Meeting at which the Commission discusses and votes upon how to proceed regarding the NPRM or NSPRM.

49. Since fiscal year 2009-2010, Arizona has had in place a general rulemaking moratorium, first through creation of the Legislature¹⁴ and then through gubernatorial orders. The most recent gubernatorial order is Executive Order 2016-03 (“EO 2016-03”), which became effective on February

¹³ The Commission did not determine that a substantial change existed in the rules as approved in Decision No. 75250, but acted upon the AG’s determination that a substantial change had been made. A.R.S. § 41-1025 prohibits an agency from adopting a final rule that is substantially different from the rule proposed by the agency in its NPRM and provides, in A.R.S. § 41-1025(B), that an agency must consider all of the following in determining whether a rule is substantially different from the proposed rule published in the NPRM:

1. The extent to which all persons affected by the rule should have understood that the published proposed rule would affect their interests.
2. The extent to which the subject matter of the rule or the issues determined by that rule are different from the subject matter or issues involved in the published proposed rule.
3. The extent to which the effects of the rule differ from the effects of the published proposed rule if it had been made instead.

¹⁴ See Laws 2010, Ch. 287, § 18 (amending Laws 2009 (3rd Special Session) Ch. 7, § 28).

1 8, 2016, and expires on December 31, 2016. EO 2016-03 generally prohibits a state agency from
2 conducting rulemaking except for specific purposes and with prior written approval from the Office of
3 the Governor. However, EO 2016-03 expressly exempts the Commission from its restrictions, while
4 strongly encouraging voluntary compliance.

5 50. Although Commission rulemakings are not restricted by EO 2016-03, if they were, this
6 rulemaking would meet the parameters of EO 2016-03 because the safety standards updated through
7 the rulemaking serve “[t]o prevent a significant threat to the public health, peace, or safety,” and the
8 rulemaking is being conducted primarily “[t]o comply with a federal statutory or regulatory
9 requirement [for which] compliance is related to a condition for the receipt of federal funds or
10 participation in any federal program.”

11 51. A.R.S. § 41-1032(A) provides that a final rule filed with the Office of the Secretary of
12 State under A.R.S. § 41-1031 becomes effective 60 days after filing unless the rulemaking agency
13 includes in the Preamble information demonstrating that the rule needs to be effective immediately
14 upon filing, for one of five reasons, among them: (1) to preserve the public peace, health, or safety; or
15 (2) to avoid a violation of federal law or regulation or state law, if the need for an immediate effective
16 date is not created due to the agency’s delay or inaction.

17 52. Because the rule revisions included in the NSPRM are already in effect pursuant to the
18 NERM, and approval of the Commission’s NERM (Renewal) is currently pending with the AG, the
19 rule revisions do not need to become effective immediately upon filing.

20 **Public Comments & Responses**

21 53. Spectrum provided the only comments received concerning the NSPRM rule revisions,
22 focusing on its disagreement with the new A.A.C. R14-5-202(T).

23 54. In its substantive comments, Spectrum’s primary assertions were that 100 percent
24 nondestructive testing would be overly expensive and would not ensure safety more effectively than
25 the actions Spectrum agreed to in settling the recent Complaint case, that neither PHMSA nor any of
26 the industry standard-setting organizations have adopted a requirement of 100 percent nondestructive
27 testing for on-site LNG facility pipeline welds, and that the Commission should participate in and defer
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1 to the results of an upcoming PHMSA examination into revising LNG facilities regulation rather than
2 adopting R14050202(T).

3 55. Spectrum's comments are set forth in Exhibit 3, along with Staff's responses thereto;
4 Staff's answers to the questions posed in the Procedural Order of January 28, 2016; Spectrum's
5 responses to the questions and Staff's answers; Staff's replies to Spectrum's responses; and the
6 Commission's responses to all of the above.

7 56. The Commission's responses set forth in Exhibit 3, attached hereto and incorporated
8 herein, adequately address each of the concerns expressed by Spectrum. The Commission adopts its
9 responses set forth in Exhibit 3 and finds that no changes to R14-5-202(T) are necessary as a result of
10 Spectrum's comments.

11 **Modifications to the NSPRM Rule Language**

12 57. The Commission finds that no changes should be made to the language of the rule
13 revisions as included in the NSPRM, attached hereto as Exhibit 2, and notes that this also reflects no
14 change from the language of the rule revisions as adopted in the NERM, attached hereto as Exhibit 1.

15 **Probable Economic Impacts**

16 58. In Decision No. 75250, the Commission adopted Staff's EIS, attached to the Decision
17 as Exhibit C, with modifications (1) to include information omitted from the EIS but included in the
18 NPRM Preamble, to the effect that LNG facility operators will experience increased testing costs when
19 welding is performed, although the additional costs are expected to be minimal because welding is a
20 nonrecurring activity, and (2) to state that increased testing costs will only be incurred by an LNG
21 facility operator if the operator is not already ensuring that nondestructive testing is completed for each
22 weld performed on newly installed, replaced, or repaired pipeline or appurtenances.¹⁵

23 59. Staff included the modifications to the EIS when the NFRM packet was filed with the
24 AG, and the modified EIS was included within Attachment 2 to Decision No. 75289.

25 60. Because the rule revisions included in the NSPRM are already in effect pursuant to the
26 NERM, and are expected to remain in effect until December 9, 2016, pursuant to the NERM (Renewal),
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28 ¹⁵ Decision No. 75250 at 12-13.

1 final adoption of the rule revisions through an NFRM would not have any economic impact at this
2 time. Nonetheless, the Commission believes that it is appropriate to include in the EIS for this
3 rulemaking the impacts of the rule revisions, as though the rule revisions were not already in effect.

4 61. Thus, the Commission finds that the EIS included as Attachment 2 to Decision No.
5 75289, and attached hereto and incorporated herein as Exhibit 4, should be adopted, with the following
6 language to be added at the end of § 4(B) of the EIS:

7 “Arizona testing laboratories uniformly charge for nondestructive testing by
8 the hour rather than by the weld, and each Arizona testing laboratory would
9 charge for a full day’s labor per technician because the current Arizona
10 LNG facilities are outside of the lab’s vicinity. Each lab charges a flat rental
11 cost for the mobile testing lab and darkroom facilities, at a cost of
12 approximately \$700 per day, and would charge travel expense of
13 approximately \$0.75 per mile, per diem of \$175 per technician, and the costs
14 of consumable testing materials. The costs for the different testing methods,
15 not including the flat rental cost, technician per diem, and mileage charges,
16 are estimated as follows:

- 17 (a) Radiography—Labor cost of \$145/technician/hour for eight hours and
18 film cost of \$36 to \$41 per weld;
19 (b) Ultrasonic—Labor cost of \$80/technician/hour for eight hours;
20 (c) Liquid penetrant—Labor cost of \$75/technician/hour for eight hours
21 and \$15 per can of liquid penetrant used; and
22 (d) Magnetic particle—Labor cost of \$75/technician/hour for eight hours
23 and approximately \$35/day for materials used.

24 Because R14-5-202(T) allows an LNG facility operator to select the
25 nondestructive testing method to be used and allows for flexibility in the
26 timing of testing, by allowing all testing to be performed after all welding
27 is completed versus the current requirement for testing of a percentage of
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1 each day's welds, an LNG facility operator will be able to mitigate its
2 testing expenses and may even find that testing becomes less expensive.
3 Additionally, if testing required by R14-5-202(T) prevents a weld failure
4 that would result in release of large quantities of gas, the impacted LNG
5 facility operator will receive significant benefits in the form of avoided
6 product loss and damages, and the public will receive significant benefits
7 due to the avoided public health and safety hazard that would result."

8 **Resolution**

9 62. As indicated in Findings of Fact No. 38, the primary purpose of the rule revisions is to
10 make the Commission's Pipeline Safety rules consistent with current federal pipeline safety regulations
11 so that the Commission maintains compliance with the requirements of its intergovernmental
12 agreement with PHMSA. Permanent final adoption of the rule revisions other than R14-5-202(T) is
13 just, reasonable, in the public interest, and necessary for this purpose.

14 63. As described in Exhibit 3, because of the more difficult welding conditions encountered
15 on site at an LNG facility versus the conditions in a controlled manufacturing environment, and because
16 of the damages and public health risks that can result from a weld breach with a gas release, completing
17 nondestructive testing of less than 100 percent of the on-site welds performed at an LNG facility is not
18 adequate to ensure health and safety. For the reasons described in the Commission's responses set
19 forth in Exhibit 3, the nondestructive testing standard embodied in R14-5-202(T) is just, reasonable,
20 safe, proper, adequate, sufficient, in the public interest, and necessary to promote and safeguard the
21 health and safety of LNG facility employees, customers, and the public. Additionally, due to the
22 flexibility R14-5-202(T) provides as to testing technology and timing, the nondestructive testing
23 standard in R14-5-202(T) may result in less expensive testing than under the current federal standard.¹⁶

24 64. It is just and reasonable and in the public interest to permanently adopt the rule revisions
25 included in the NSPRM through submission of an NFRM to the AG for approval under A.R.S. § 41-
26 1044.

27
28 ¹⁶ Pursuant to the NERM, the current Arizona standard is that in R14-5-202(T), although it is subject to expiration.

65. The proposed rule revisions, as set forth in the NSPRM attached hereto as Exhibit 2, should be submitted to the AG in the form of an NFRM package conforming to the requirements of A.R.S. § 41-1001(16)(d) and the Rules of the Office of the Secretary of State.¹⁷ The NFRM package should include, as a separate document, the EIS attached hereto as Exhibit 4, along with the additional language provided in Findings of Fact No. 61.

CONCLUSIONS OF LAW

1. Pursuant to Arizona Constitution, Art. 15, § 3 and A.R.S. §§ 40-202, 40-203, 40-321, 40-322, 40-336, and 40-441, the Commission has the authority and jurisdiction to revise A.A.C. Title 14, Chapter 5, Article 2 as included in the NSPRM and adopted in the NERM.

2. The Commission is required to submit this rulemaking to the AG for certification under A.R.S. § 41-1044.

3. Notice of the oral proceedings regarding the NPRM and NSPRM was provided in the manner prescribed by law.

4. The Commission has not yet closed the record for this rulemaking, as contemplated by A.R.S. § 41-1024.

5. The revisions to A.A.C. Title 14, Chapter 5, Article 2, as included in the NSPRM attached hereto as Exhibit 2 and adopted in the NERM attached hereto as Exhibit 1, are clear, concise, and understandable; within the Commission's powers to make; within enacted legislative standards; and made in compliance with appropriate procedures.

6. Adoption of the revisions to A.A.C. Title 14, Chapter 5, Article 2, as included in the NSPRM attached hereto as Exhibit 2 and adopted in the NERM attached hereto as Exhibit 1, is just and reasonable and in the public interest.

7. Adoption of the revision to A.A.C. R14-5-202(T), as included in the NSPRM attached hereto as Exhibit 2 and adopted in the NERM attached hereto as Exhibit 1, is just, reasonable, safe, proper, adequate, sufficient, in the public interest, and necessary to promote and safeguard the health and safety of LNG facility employees, customers, and the public.

¹⁷ See, e.g., A.A.C. R1-1-105, R1-1-601, and R1-1-602.

8. The EIS attached hereto as Exhibit 4, with the additions set forth in Findings of Fact No. 61, substantially conforms to the requirements of A.R.S. §§ 41-1057 and 41-1055.

9. The Preamble for the NFRM for this matter should include, to fulfill the requirements of A.R.S. § 41-1001(16)(d)(iii), the comments and responses set forth in Exhibit 3 hereto.

ORDER

IT IS THEREFORE ORDERED that the Commission hereby adopts the text of A.A.C. Title 14, Chapter 5, Article 2, as included in the NSPRM attached hereto as Exhibit 2 and adopted in the NERM attached hereto as Exhibit 1.

IT IS FURTHER ORDERED that the Commission hereby adopts the Economic Impact Statement attached hereto as Exhibit 4, with the additions set forth in Findings of Fact No. 61.

IT IS FURTHER ORDERED that the Commission's Safety Division/Legal Division shall prepare and file with the Office of the Attorney General, for certification under A.R.S. § 41-1044, a Notice of Final Rulemaking package that includes (1) A Notice of Final Rulemaking setting forth the text of A.A.C. Title 14, Chapter 5, Article 2, adopted herein and including a Preamble conforming to A.R.S. § 41-1001(16)(d); (2) the Economic Impact Statement adopted herein; (3) any additional documents required by the Office of the Attorney General for certification under A.R.S. § 41-1044; and (4) any additional documents required for publication and codification by the Office of the Secretary of State after the rulemaking is certified by the Office of the Attorney General.

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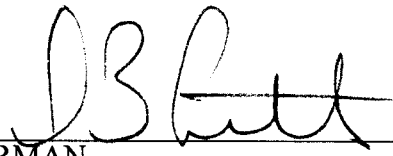
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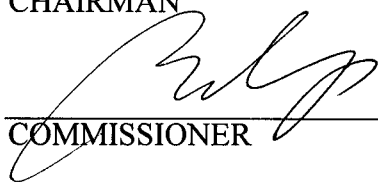
IT IS FURTHER ORDERED that the Commission's Safety Division/Legal Division is authorized to make non-substantive changes in the text of A.A.C. Title 14, Chapter 5, Article 2 adopted herein; the Economic Impact Statement adopted herein; and any of the additional documents required by the Office of the Attorney General or the Office of the Secretary of State, in response to comments received from the Office of the Attorney General or the Office of the Secretary of State during the certification, publication, and/or codification process, unless the Commission requires otherwise after notification of those changes.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

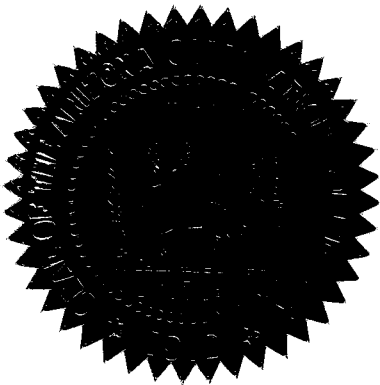

CHAIRMAN


COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER



IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 27th day of June 2016.


JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
SH:rt

SERVICE LIST FOR:

PROPOSED AMENDMENTS TO PIPELINE SAFETY
RULES

DOCKET NO.:

RG-00000A-15-0098

Ray Latchem
DESERT GAS, LP
1709 Utica Square - 240
Tulsa, Oklahoma 74114

Frank McRae
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640 North Mesa Drive
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EL PASO ENERGY
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Brandon Matthews
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COLORADO CITY
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18 Steve Marositz
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22 Rick Duncan
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25 Spokane, Washington 99201

26 Brian Lehman
27 Interim Director, Safety Division
28 ARIZONA CORPORATION COMMISSION
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Janice Alward
Chief Counsel, Legal Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington
Phoenix, Arizona 85007

EXHIBIT 1



Notices of Emergency Rulemaking

Arizona Administrative REGISTER

NOTICES OF EMERGENCY RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Emergency Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these rules.

Questions about the interpretation of the emergency rules should be addressed to the agency proposing them. Refer to Item #5 to contact the person charged with the rulemaking.

NOTICE OF EMERGENCY RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION

CHAPTER 5. CORPORATION COMMISSION – TRANSPORTATION

[R15-196]

PREAMBLE

1. Article, Part, or Section Affected (as applicable)

| | |
|-----------|--------------------------|
| R14-5-202 | <u>Rulemaking Action</u> |
| R14-5-203 | Amend |
| R14-5-204 | Amend |
| R14-5-205 | Amend |
| R14-5-207 | Amend |
2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):
 Authorizing statute: Arizona Constitution, Article XV § 3.
 Implementing statute: A.R.S. § 40-441
3. The effective date of the rule:
 December 15, 2015
 The rule takes effect upon filing the Notice of Emergency Rulemaking with the Office of the Secretary of State by the Office of the Attorney General. An exception from the effective date provisions in A.R.S. § 41-1032(A) is necessary to preserve public health and safety by immediately bringing the state rules into conformity with Federal Regulations relating to the safe transportation of natural gas and hazardous materials by pipeline in Arizona.
4. Citations to all related emergency rulemaking notices published in the Register as specified in R1-1-409(A) that pertain to the record of this notice of emergency rulemaking:
 None
5. The agency's contact person who can answer questions about the rulemaking:
 Name: Charles Hains, Commission Counsel, Legal Division
 Address: Arizona Corporation Commission
 1200 W. Washington St.
 Phoenix, AZ 85007
 Telephone: (602) 542-3402
 Fax: (602) 542-4870
 E-mail: Chains@azcc.gov
 Web site: www.azcc.gov
6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:
 The purpose of the proposed rules is to amend, R14-5-202, R14-5-203, R14-5-204, R14-5-205 and R14-5-207, of the Pipeline Safety Rules. The amendments to R14-5-202, R14-5-203 R14-5-204, R14-5-205 and R14-5-207 are revised for clarity and to update incorporations by reference of the most recent amendments to the Code of Federal Regulations ("CFR"), Title 49.
 The Commission is exempt from the Executive Order 2015-01 requirement to obtain prior approval before engaging in rulemaking proceedings.



7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

Small Business Subject to the Rules: These rules do not change the responsibilities of master meter operators already established in 1970 by the adoption by the Commission of the Code of Federal Regulations, Title 49, Parts 191 and 192.

The new rules may increase testing costs for operators of liquefied natural gas facilities when welding is performed, although such costs should be minimal as welding is a non-recurring activity. Such costs will only be incurred if the liquefied natural gas facility operator is not already ensuring that nondestructive testing is completed for each weld performed on newly installed, replaced, or repaired pipeline or appurtenances.

The new rules will have no effect upon consumers or users of the gas service provided by regulated public utilities as they presently are required to be in compliance with all standards, but, this will benefit consumers, users and the general public by maintaining a safe pipeline system.

The new rules are the least costly method for obtaining compliance with the long standing minimum safety standards. The rules do not impose additional standards. There is no less intrusive method

10. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include but are not limited to:

- a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

- b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

The rule amendments bring the state rules into conformity with the federal law, thereby paralleling the federal law and therefore are neither more nor less stringent than the federal law.

- c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

None

11. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

49 CFR 40 (October 1, 2015) adopted in R14-5-202(B)

49 CFR 191 (October 1, 2015) adopted in R14-5-202(B)

49 CFR 192 (October 1, 2015), except I(A)(2) and (3) of Appendix D to part 192 adopted in R14-5-202(B)

49 CFR 193 (October 1, 2015) adopted in R14-5-202(B)

49 CFR 195 (October 1, 2015), except 195.1(b)(2), (3), and (4) adopted in R14-5-202(B)

49 CFR 199 (October 1, 2015) adopted in R14-5-202(B)

12. An agency explanation about the situation justifying the rulemaking as an emergency rule:

The Commission finds that it is necessary to adopt the rule amendments included in this Notice of Emergency Rulemaking as an emergency measure, and with an immediate effective date, because the rule amendments must take effect before January 1, 2016, in order for the Commission to (1) protect the public health, safety, and welfare; (2) comply with a deadline imposed by a federal program; (3) avoid violating requirements of a federal regulation; (4) avoid an imminent budget reduction; and (5) avoid serious prejudice to the public interest. The Commission's need to conduct emergency rulemaking is not due to its own inaction or delay and could not have been averted by timely compliance with the notice and public participation provisions of A.R.S. Title 41, Chapter 6.

The Commission attempted to complete the rule amendments included in this emergency rulemaking through regular rulemaking, for which a Notice of Proposed Rulemaking was published at 21 A.A.R. 674 (May 15, 2015); an oral proceeding was held on June 18, 2015; and a Notice of Final Rulemaking packet was filed with the Office of the Attorney General ("AG"), pursuant to A.R.S. § 41-1044, on September 15, 2015. Subsequently, the Commission was notified by the AG that clarifying modifications to date parentheticals included in the Notice of Final Rulemaking were considered to constitute a substantial change under A.R.S. § 41-1025. These circumstances presented an unanticipated delay in the regular rulemaking process making it impossible for the Commission to adopt the rule amendments through regular rulemaking before January 1, 2016. Thus, the Commission is adopting the rule amendments as an emergency measure, to ensure that the rule amendments become effective before January 1,



2016, and will follow this emergency rulemaking with additional regular rulemaking to adopt the rule amendments. The primary purpose of the rule amendments is to make the Commission's rules consistent with current federal pipeline safety regulations by updating incorporations by reference in the Commission's rules to ensure that the Commission maintains compliance with the requirements of its intergovernmental agreement with the U.S. Department of Transportation's Pipeline and Hazardous Material Safety Administration ("PHMSA"). The rule amendments update the incorporations by reference for 49 CFR Parts 40, 191, 192, 193, 195, and 199 as well as several U.S. Department of Transportation's Pipeline and Hazardous Material Safety Administration ("PHMSA") reporting forms. As a secondary purpose, the rule amendments also clarify some of the provisions in the rules.

Under 49 U.S.C. § 60105, the Commission holds certification from PHMSA authorizing the Commission to prescribe and enforce safety standards and practices for intrastate pipeline facilities and intrastate pipeline transportation. The Commission is also authorized to act as an interstate agent under 49 CFR Chapter 601. To maintain its certification, the Commission must annually submit to PHMSA a certification stating, *inter alia*, that the Commission (1) has regulatory jurisdiction over the standards and practices to which the certification applies; (2) has adopted, by the date of certification, each applicable standard prescribed under 49 U.S.C. Chapter 601 or, if the standard was prescribed no later than 120 days before certification, is taking steps to adopt the standard; and (3) is enforcing each adopted standard through means including inspections by qualified Commission employees. The certification filing must also identify the persons subject to the Commission's safety jurisdiction, describe specific types of reported accidents or incidents during the past 12 months, provide an investigation summary for each accident or incident, and describe the Commission's regulatory and enforcement practices. PHMSA may reject certification for a state authority if it determines that the state authority is not satisfactorily enforcing compliance with the applicable federal safety standards of 49 U.S.C. Chapter 601. A state authority that carries out a safety program pursuant to certification under 49 U.S.C. § 60105 is eligible to obtain grant funding from PHMSA of up to 80 percent of the state authority's costs for the personnel, equipment, and activities reasonably required to carry out the program for the next calendar year. One of the performance factors considered by PHMSA when determining the allocation of grant funds to a state authority is whether the state has adopted the applicable federal pipeline safety standards. PHMSA can withhold payment if it determines that a state authority is not satisfactorily carrying out its safety program.

If the Commission fails to make the rule amendments effective by December 31, 2015, the compliance deadline under the PHMSA certification program, the Commission could lose federal grant funding for the Commission's Pipeline Safety program. This would constitute an imminent budget reduction and would result in serious prejudice to the public interest, which is best served by a robust Pipeline Safety program that has sufficient resources to enforce the most current federal safety standards. Because the rules at issue establish safety standards consistent with the most current federal safety standards, it is in the public interest to have the rules in effect and capable of enforcement as soon as possible.

13. The date the Attorney General approved the rule:

December 15, 2015

14. The full text of the rules follows:

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

CHAPTER 5. CORPORATION COMMISSION – TRANSPORTATION

ARTICLE 2. PIPELINE SAFETY

Section

- R14-5-202. Construction and Safety Standards for Gas, LNG, and Hazardous Liquid Pipeline Systems
- R14-5-203. Pipeline Incident Reports
- R14-5-204. Annual Reports
- R14-5-205. Commission Investigations
- R14-5-207. Master Meter System Operators

ARTICLE 2. PIPELINE SAFETY

R14-5-202. Construction and Safety Standards for Gas, LNG, and Hazardous Liquid Pipeline Systems

- A. No Change
- B. Subject to the definitional changes in R14-5-201 and the modifications noted in this Section, the Commission adopts, incorporates, and approves as its own 49 CFR 40; 191; 192, except (I)(A)(2) and (3) of Appendix D to Part 192; 193; 195, except 195.1(b)(2), (3), and (4); and 199(~~October 1, 2012~~ October 1, 2015), including no future editions or amendments, which are incorporated by reference; on file with the Office of Pipeline Safety; and published by and available from the U.S. Government Printing Office, 710 North Capital Street N.W., Washington DC 20401, and at <http://>

Arizona Administrative REGISTER

Notices of Emergency Rulemaking

www.gpo.gov/fdsys/. For purposes of 49 CFR 192, "Business District" means an area where the public congregate for economic, industrial, religious, educational, health, or recreational purposes and two or more buildings used for these purposes are located within 100 yards of each other.

- C. No change
 - 1. No change
 - 2. No change
- D. No change
- E. No change
 - 1. No change
 - 2. No change
- F. No change
- G. No change
- H. No change
- I. No change
- J. An operator of an intrastate pipeline transporting LNG, gas, or a hazardous liquid shall use a cathodic protection system designed to protect the metallic pipeline in its entirety, in accordance with 49 CFR 192, Subpart I, ~~October 1, 2010 (and no future amendments)~~, as incorporated by reference in subsection (B), and copies available from the Office of Pipeline Safety and the United States Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954, except Sections (I)(A)(2) and (3) of Appendix D to Part 192 shall not be utilized. This modifies 49 CFR 192.463(a), 193.2629, and 195.571.
- K. No change
- L. No change
- M. No change
- N. An operator of an intrastate pipeline transporting gas or hazardous liquid that constructs an underground pipeline system using plastic pipe shall bury the installed pipe with at least 6 inches of sandy type soil, free of any rock or debris, surrounding the pipe for bedding and shading, unless the pipe is otherwise protected as approved by the Office of Pipeline Safety. Steel pipe shall be installed with at least 6 inches of sandy type soil, free of any debris or materials injurious to the pipe coating, surrounding the pipe for bedding and shading, unless the pipe is otherwise protected as approved by the Office of Pipeline Safety. This modifies 49 CFR 192.321, 192.361, and 195.246.
- O. No change
- P. No change
- Q. An operator of an intrastate pipeline transporting gas shall survey and grade all detected leakage according to the standards provided below, which modify 49 CFR 192.706 and 192.723:
 - 1. In the case of all gas except LPG, leakage surveys and grading shall be performed pursuant to the standards set by ASME Guide for Gas Transmission and Distribution Pipeline System, Guide Material, Appendix G-11-1983, including no future editions or amendments, which is incorporated by reference; on file with the Office of Pipeline Safety; published by and available from ASME, ~~Three Two~~ Park Avenue, New York, NY 10016-5990; and modified by omitting 4.4(c) and by replacing "should" with "shall" each time it appears.
 - 2. In the case of LPG, leakage surveys and grading shall be performed pursuant to the standards set by ASME Guide for Gas Transmission and Distribution Pipeline System, Guide Material, Appendix G-11A-1983, including no future editions or amendments, which is incorporated by reference; on file with the Office of Pipeline Safety; published by and available from ASME, ~~Three Two~~ Park Avenue, New York, NY 10016-5990; and modified by replacing "should" with "shall" each time it appears.
 - 3. No change
- R. No change
- S. No change
- T. An operator of an LNG facility shall ensure that nondestructive testing is completed for each weld performed on newly installed, replaced, or repaired pipeline or an appurtenance. This modifies 49 CFR 193.2303.
- ~~T~~U. In the event of an unknown failure of a gas, LNG, or hazardous liquid pipeline, resulting in the operator's being required to provide a telephonic or written report under R14-5-203 (B) or (C) and in the operator's removing a portion of the failed pipeline, the following shall occur:
 - 1. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - 3. Within 48 hours after receiving telephonic notification pursuant to subsection (~~T~~ U)(2), the Office of Pipeline Safety shall:



- a. Determine, based on the information provided by the operator and the availability, adequacy, and reliability of any pipeline testing laboratory operated by the operator, whether it is necessary to have the removed portion of pipeline tested at an independent laboratory; and
- b. Telephonically notify the operator either:
 - i. That the operator must have the removed portion of pipeline tested, in accordance with Office of Pipeline Safety directions, by an independent laboratory selected by the Office of Pipeline Safety as provided in subsection (~~F~~ U)(5), to determine the cause or causes of the failure; or
 - ii. That the operator is not required to have the removed portion of pipeline tested by an independent laboratory and instead must conduct testing in its own pipeline testing laboratory, after which the operator may discard the removed portion of pipeline;
4. After providing telephonic notice as provided in subsection (~~F~~ U)(3)(b), the Office of Pipeline Safety shall confirm its notification in writing;
5. If the Office of Pipeline Safety directs testing by an independent laboratory:
 - a. The Office of Pipeline Safety shall:
 - i. Determine, as provided in subsection (~~F~~ U)(6), the independent laboratory that will do the testing and the period of time within which the testing is to be completed;
 - ii. No change
 - iii. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
6. In determining an independent laboratory to perform testing required under subsection (~~F~~ U), the Office of Pipeline Safety shall:
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - c. No change
 - i. No change
 - ii. No change
 - d. No change
 - No change

~~U.V.~~ An operator shall ensure that all repair work performed on an existing intrastate pipeline transporting LNG, hazardous liquid, or gas complies with this Article.

~~V.W.~~ The Commission may waive compliance with any of the requirements of this Section upon a finding that such a waiver is in the interest of public and pipeline safety.

~~W.X.~~ To ensure compliance with the provisions of this Article, the Commission or an authorized representative thereof may enter the premises of an operator of an intrastate pipeline to inspect and investigate the property, books, papers, electronic files, business methods, and affairs that pertain to the pipeline system operation.

R14-5-203. Pipeline Incident Reports

- A. No change
- B. No change
 1. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 2. No change
 - a. No change



- i. No change
 - ii. No change
 - iii. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - g. No change
 - 3. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
- C. No change
- 1. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - 2. A written incident report concerning a gas pipeline system shall be completed using the following, as applicable, which are incorporated by reference; on file with the Office of Pipeline Safety; and published by and available from PHMSA at East Building, Second Floor, 1200 New Jersey Ave., SE, Washington, DC 20590, and at <http://www.phmsa.dot.gov/pipeline/library/forms>:
 - a. Form PHMSA F 7100.1: Incident Report – Gas Distribution System (~~June 2011~~October 2014), including no future editions or amendments;
 - b. Form PHMSA F 7100.2: Incident Report – Natural and Other Gas Transmission and Gathering Pipeline Systems (~~December 2012~~October 2014), including no future editions or amendments; or
 - c. Form PHMSA F 7100.3: Incident Report – Liquefied Natural Gas (LNG) Facilities (~~June 2011~~October 2014), including no future editions or amendments.
 - 3. An operator of an intrastate pipeline transporting hazardous liquid shall file a written incident report completed using Form PHMSA F 7000-1: Accident Report – Hazardous Liquid Pipeline Systems (~~December 2012~~July 2014), including no future editions or amendments, which is incorporated by reference, on file with the Office of Pipeline Safety, and published by and available from PHMSA as set forth in subsection (C)(2), any time the operator would have been required to make a notification as required under R14-5-203(B)(2).
 - 4. A written incident report required by this Section shall be filed with the Office of Pipeline Safety within the time specified below:
 - a. For an LNG or gas - incident, within 20 days after detection; and
 - b. No change
 - 5. No change
 - 6. After an incident involving shutdown or partial shutdown of a master meter system, an operator of a gas pipeline system shall request and obtain a clearance from the Office of Pipeline Safety before turning on or reinstating service to ~~a~~ the master meter system or portion of the master meter system that was shut down.

R14-5-204. Annual Reports

- A. An operator of an intrastate pipeline shall file with the Office of Pipeline Safety, not later than March 15, for the preceding calendar year, an annual report completed using one of the following, as applicable, which are incorporated by reference; on file with the Office of Pipeline Safety; and published by and available from PHMSA as provided in R14-5-



203(C)(2):

1. Form PHMSA F 7000-1.1: Annual Report for Calendar Year 20__ Hazardous Liquid Pipeline Systems (June ~~2011~~2014), including no future editions or amendments, which shall be completed in accordance with the PHMSA instructions for the form;
2. Form PHMSA F 7100.1-1: Annual Report for Calendar Year 20__ Gas Distribution System (~~January 2011~~ May 2015), including no future editions or amendments, which shall be completed in accordance with the PHMSA instructions for the form;
3. Form PHMSA F 7100.2-1: Annual Report for Calendar Year 20__ Natural and Other Gas Transmission and Gathering Pipeline Systems (~~December 2012~~October 2014), including no future editions or amendments, which shall be completed in accordance with the PHMSA instructions for the form; or
4. Form PHMSA F 7100.3-1: Annual Report for Calendar Year 20__ Liquefied Natural Gas (LNG) Facilities (~~June 2011~~October 2014), including no future editions or amendments, which shall be completed in accordance with the PHMSA instructions for the form.

B. No change

R14-5-205. Commission Investigations

A. No change

B. While investigating an incident, accident, or event, the Commission; or an authorized agent of the Commission may:

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change

R14-5-207. Master Meter System Operators

A. No change

B. An operator of a master meter system shall comply with this Section as a condition of receiving service from a provider. Noncompliance with this Section by an operator of a master ~~meters~~ meter system constitutes grounds for termination of service by the provider when informed in writing by the Office of Pipeline Safety. In case of an emergency, the Office of Pipeline Safety may give the provider oral instructions to terminate service, with written confirmation to be furnished within 24 hours.

C. No change

D. No change

1. No change
2. No change

E. No change

1. No change
2. No change
 - a. No change
 - b. No change
 - c. No change

F. No change

G. No change

H. No change

I. No change

J. No change

K. No change

L. No change

1. No change
2. No change
3. No change
4. No change

M. No change

N. No change

1. No change
2. No change
3. No change
4. No change

O. No change

1. No change
2. No change
3. No change
4. No change



- P. In the event of an unknown failure of a gas pipeline resulting in a master meter system operator's being required to provide a report under subsection (Q) and in the operator's removing a portion of the failed pipeline, the following shall occur:
1. No change
 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 3. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 4. No change
 5. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 6. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - c. No change
 - i. No change
 - ii. No change
 - d. No change
- Q. No change
1. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change
 - vii. No change
 - viii. No change
 - b. No change
 - c. An event involving permanent or temporary discontinuance of service to a master meter system or any portion of a master meter system due to a failure of a leak test or for any purpose other than to perform routine maintenance; or
 - d. No change
 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change



- 3. No change
- R. No change
- S. To ensure compliance with all applicable provisions of this Article, the Commission or an authorized representative thereof, may enter the premises of an operator of a master meter system to inspect and investigate the property, books, papers, electronic files, business methods, and affairs that pertain to the operation of the master meter system.

EXHIBIT 2

Notices of Supplemental Proposed Rulemakings

Arizona Administrative REGISTER

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKINGS

This section of the *Arizona Administrative Register* contains Notices of Supplemental Proposed Rulemaking.

After an agency has filed a Notice of Proposed Rulemaking and it is published in the *Register*, an agency may decide to make substantial changes to the rule after it is proposed.

The agency prepares a Notice of Supplemental Proposed Rulemaking with these proposed substantial changes. When filed, the Notice is published under the deadline schedule in the back of the *Register*. The Notice

of Supplemental Proposed Rulemaking shall be published in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the rules should be addressed to the agency that promulgated the rules. Refer to item #4 of the Preamble of this Notice to contact the person charged with the rulemaking and item #10 for information related to public hearings and oral comments.

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION

CHAPTER 5. CORPORATION COMMISSION – TRANSPORTATION

[R15-182]

PREAMBLE

1. Citations to the agency's Notice of Rulemaking Docket Opening, the Notice of Proposed Rulemaking, and any other Notices of Supplemental Proposed Rulemaking (if applicable) as published in the *Register* as specified in R1-1-409(A). A list of any other related notices published in the *Register* to include the as specified in R1-1-409(A):

Notice of Rulemaking Docket Opening: 21 A.A.R. 685, May 15, 2015
Notice of Proposed Rulemaking: 21 A.A.R. 674, May 15, 2015

- | | |
|---|--------------------------|
| 2. <u>Articles, Parts, or Sections Affected (as applicable)</u> | <u>Rulemaking Action</u> |
| R14-5-202 | Amend |
| R14-5-203 | Amend |
| R14-5-204 | Amend |
| R14-5-205 | Amend |
| R14-5-207 | Amend |

3. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statutes/laws: A.R.S. § 40-441, Arizona Constitution, Article 15, § 3
Implementing statutes: A.R.S. §§ 40-441, 40-202(A), 40-203, 40-321(A), 40-322, 40-336

4. The agency's contact person who can answer questions about the rulemaking:

Name: Charles Hains, Commission Counsel, Legal Division
Address: Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 542-3402
Fax: (602) 542-4870
E-mail: CHains@azcc.gov
Web site: www.azcc.gov

5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The Commission's Pipeline Safety rules establish construction and safety standards for gas, liquefied natural gas ("LNG"), and hazardous liquid pipeline systems and for master meter systems. The rules are designed to protect all residents of and visitors to the State of Arizona by helping to ensure that the handling and transportation of gas, LNG, and hazardous liquids are conducted in the safest manner possible. The primary purpose of this rulemaking is to make the Commission's Pipeline Safety rules consistent with current federal pipeline safety regulations so that the Commission maintains compliance with the requirements of its intergovernmental agreement with the U.S.



Department of Transportation's Pipeline and Hazardous Material Safety Administration ("PHMSA"). The rulemaking accomplishes this by updating the incorporations by reference for 49 CFR Parts 40, 191, 192, 193, 195, and 199, as well as several PHMSA reporting forms, and by clarifying some requirements of the rules.

Under Title 49, § 60105 of the U.S. Code ("49 U.S.C. § 60105"), the Commission holds certification from PHMSA authorizing the Commission to prescribe and enforce safety standards and practices for intrastate pipeline facilities and intrastate pipeline transportation. (See 49 U.S.C. § 60105(a).) The Commission is also authorized to act as an interstate agent under 49 CFR Chapter 601. To maintain its certification, the Commission must annually submit to PHMSA a certification stating, *inter alia*, that the Commission (1) has regulatory jurisdiction over the standards and practices to which the certification applies; (2) has adopted, by the date of certification, each applicable standard prescribed under 49 U.S.C. Chapter 601 or, if the standard was prescribed no later than 120 days before certification, is taking steps to adopt the standard; and (3) is enforcing each adopted standard through means including inspections by qualified Commission employees. (49 U.S.C. § 60105(b).) The certification filing must also identify the persons subject to the Commission's safety jurisdiction, describe specific types of reported accidents or incidents during the past 12 months, provide an investigation summary for each accident or incident, and describe the Commission's regulatory and enforcement practices. (49 U.S.C. § 60105(c).) PHMSA may reject certification for a state authority if it determines that the state authority is not satisfactorily enforcing compliance with the applicable federal safety standards of 49 U.S.C. Chapter 601. (49 U.S.C. § 60105(f).) A state authority that carries out a safety program pursuant to certification under 49 U.S.C. § 60105 is eligible to obtain grant funding from PHMSA of up to 80 percent of the state authority's costs for the personnel, equipment, and activities reasonably required to carry out the program for the next calendar year. (49 U.S.C. § 60107(a).) One of the performance factors considered by PHMSA when determining the allocation of grant funds to a state authority is whether the state has adopted the applicable federal pipeline safety standards. (49 CFR § 198.13(c)(7).) PHMSA can withhold payment if it determines that a state authority is not satisfactorily carrying out its safety program. (49 U.S.C. § 60107(b).) PHMSA requires the Commission to update its Pipeline Safety rules to the current federal standards by December 31, 2015.

The Commission commenced this rulemaking through a Notice of Rulemaking Docket Opening and Notice of Proposed Rulemaking published in the *Arizona Administrative Register* on May 15, 2015. The Commission held an oral proceeding on June 18, 2015, and did not receive any oral or written public comments on the rulemaking. On August 26, 2015, the Commission approved a Notice of Final Rulemaking ("NFRM") package for filing with the Attorney General ("AG") for certification under A.R.S. § 41-1044. The NFRM included language demonstrating the need for an immediate effective date for the rulemaking as provided under A.R.S. § 41-1032. The Commission filed the NFRM package with the AG on September 15, 2015. Subsequent to the filing of the NFRM package, the AG notified the Commission that the AG considered modifications made to a date parenthetical included in the NFRM to constitute a substantial change under A.R.S. § 41-1025 and thus would not approve the NFRM. The Commission withdrew the NFRM package and is issuing this Notice of Supplemental Proposed Rulemaking to continue the regular rulemaking process to promulgate the updated rules.

Because the Commission's failure to meet the requirements of the certification program could result in loss of funding for the Commission's Pipeline Safety program, and the PHMSA deadline for the Commission to update its Pipeline Safety rules to the current federal standards is December 31, 2015, the Commission also filed a Notice of Emergency Rulemaking ("NERM") with the AG on October 22, 2015, under A.R.S. § 41-1026, to adopt the rule revisions herein.

At the time the NFRM was approved by the Commission, the most recent codification of 49 CFR Parts 40, 191, 192, 193, 195, and 199 had been issued on October 1, 2014. However, 49 CFR Parts 192, 193, 195, and 199 had recently been amended through a PHMSA rulemaking. Thus, in the NFRM, the Commission included the following parenthetical date citation for the 49 CFR Parts: "~~(October 1, 2014)~~ October 1, 2014, as amended by the Final Rule published at 80 Fed. Reg. 168 (January 5, 2015) and effective March 6, 2015." The Notice of Proposed Rulemaking had included a parenthetical date citation of February 5, 2015, which was intended to represent the current version of the 49 CFR Parts as of March 31, 2015, when the language for the proposed rulemaking was initially provided to the Commissioners for consideration at an Open Meeting. The Commission found that the revision to the date parenthetical included in the NFRM would not result in a substantial change to the proposed rules, under A.R.S. § 41-1025, because the revision did not change the persons affected by the rules, the subject matter of the rules, the issues determined by the rules, or the effects of the rules. The AG disagreed, however, concluding that the revision resulted in a substantial change.

The rule text in the NFRM also differed from that in the propose rulemaking because it updated the parenthetical date for Form PHMSA F 7100.1-1, located in R14-5-204(A)(2), by replacing "(January 2011)" with "(January 2011 May 2015)." The Commission also found that this revision would not result in a substantial change because the



revision did not change the persons affected by the rules, the subject matter of the rules, the issues determined by the rules, or the effects of the rules. The January 2011 form and the May 2015 form differ in that the May 2015 form requires the preparer to check two additional boxes to identify commodity group and operator type and requires the preparer to break down total excavation damage events by root cause rather than just reporting the total. Both versions have burden estimates of approximately 16 hours.

The rule language included in this Notice of Supplemental Proposed Rulemaking differs from that included in the NFRM only in the parenthetical date citation for the 49 CFR Parts incorporated by reference in R14-5-202(B). A new codification of the 49 CFR Parts was issued on October 1, 2015, in accordance with the U.S. Government Publishing Office's regular codification schedule. Because this new codification includes all of the updates reflected in the revised date parenthetical included for the NFRM, and the new codification can be referenced more simply, the Commission is including the October 1, 2015, date in this Notice of Supplemental Proposed Rulemaking.

Through the NERM, the Commission will comply with the PHMSA requirement for the Commission's Pipeline Safety rules to be consistent with the current federal pipeline safety standards before January 1, 2016. Yet A.R.S. § 41-1026(D) provides that if an agency has not issued either a Notice of Proposed Rulemaking or a Notice of Supplemental Proposed Rulemaking to adopt rule revisions consistent with its NERM within 180 days after the effective date of the rules as revised by the NERM, the rules as revised by the NERM will expire and will be ineligible for renewal. Thus, the Commission can only maintain its compliance by engaging in regular rulemaking.

For the Commission to preserve public health and safety and to maintain the Commission's compliance with federal requirements, the regular rulemaking must be completed and must become effective as quickly as possible. If the Commission fails to adopt the rule updates permanently through regular rulemaking, the Commission could lose federal grant funding for the Commission's Pipeline Safety program. This would constitute an imminent budget reduction and would result in serious prejudice to the public interest, which is best served by a robust Pipeline Safety program that has sufficient resources to enforce the current federal safety standards. Because the rules at issue establish safety standards consistent with the current federal safety standards, it is in the public interest to have the rules in effect and capable of enforcement as soon as possible. The Commission intends for this rulemaking to be adopted with an immediate effective date, under A.R.S. § 41-1032(A)(1) and (2), to preserve the public peace, health, and safety, and to avoid a violation of federal law or regulation.

6. **A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

7. **An explanation of the substantial change which resulted in the supplemental notice:**

As described in item 5, the Commission does not believe that the changes made to the text of the proposed rules after the Notice of Proposed Rulemaking resulted in a substantial change under A.R.S. § 41-1025(B) and is issuing this Notice of Supplemental Proposed Rulemaking to move forward with its regular rulemaking in response to the AG's not approving the NFRM. The differences between the rules as published in the Notice of Proposed Rulemaking and the rules as set forth herein are as follows:

- R14-5-202(B) is revised by replacing "~~(October 1, 2012~~ February 5, 2015)" with "~~(October 1, 2012~~ October 1, 2015)",
- R14-5-204(A)(2) is revised by replacing "(January 2011)" with "~~(January 2011)~~ May 2015)" to update the incorporation by reference for Form PHMSA F 7100.1-1, and
- The text of subsections that are not being changed is no longer set forth in full.

8. **A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision:**

Not applicable

9. **The preliminary summary of the economic, small business, and consumer impact:**

The Commission's Pipeline Safety rules establish construction and safety standards for gas, LNG, and hazardous liquid pipeline systems and for master meter systems. The rules apply to intrastate operators of natural gas and other gas pipelines, intrastate operators of hazardous liquid pipelines, and operators of master meter gas distribution systems. The Commission's Pipeline Safety rules adopt the standards established by PHMSA through incorporation by reference of most of 49 CFR Parts 40, 191, 192, 193, 195, and 199 as well as PHMSA forms. This rulemaking updates those incorporations by reference, to make the Commission's rules consistent with the new codification of 49 CFR and the newest PHMSA forms; makes minor technical corrections; and clarifies the Commission's rules.

Other than operators of LNG facilities, intrastate operators who are already complying with the federal pipeline safety regulations will not be financially impacted by the rulemaking. Operators of LNG facilities may experience



increased testing costs when welding is performed, although the additional costs are expected to be minimal because welding is a non-recurring activity. The increased costs will be incurred only if an LNG facility operator is not already ensuring that nondestructive testing is completed for each weld performed on newly installed, replaced, or repaired pipeline or appurtenances.

The small businesses subject to the rules are master meter system operators, whose responsibilities will not be changed through this rulemaking.

The Commission will incur minimal costs as a result of the rulemaking, but will benefit substantially because the rulemaking will allow the Commission to maintain compliance with the PHMSA requirement for the Commission's Pipeline Safety rules to be consistent with current federal pipeline safety standards. This will allow the Commission to maintain its certification as an agent and its eligibility for federal grant funding to cover operating costs for the Pipeline Safety program.

The rulemaking should have no economic impact on consumers or users of gas service. However, the rulemaking will benefit all residents of and visitors to the State of Arizona by helping to ensure that the handling and transportation of gas, LNG, and hazardous liquids are conducted in the safest manner possible.

This rulemaking is the least costly method for achieving Commission compliance with the PHMSA requirements and protecting the public health and safety.

10. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Robert Miller, Office of Pipeline Safety
 Address: Arizona Corporation Commission
 2200 N. Central Ave., Ste. 200
 Phoenix, AZ 85004
 Telephone: (602) 262-5601
 Fax: (602) 262-5620
 E-mail: RMiller@azcc.gov
 Web site: www.azcc.gov

11. The time, place, and nature of the proceedings to make, amend, renumber or repeal the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the supplemental proposed rule:

Date: January 19, 2016
 Time: 10:00 a.m.
 Location: Arizona Corporation Commission
 Hearing Room No. 1
 1200 W. Washington St.
 Phoenix, AZ 85007
 Nature: Oral Proceeding

The Commission requests that written comments be submitted on or before January 19, 2016, to the Commission's Docket Control at 1200 W. Washington St., Phoenix, AZ 85007. Please reference Docket No. RG-00000A-15-0098 on all comments submitted to Docket Control.

Oral comments may be made at the oral proceeding on January 19, 2016.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

Not applicable

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

R14-5-202(B): 49 CFR 40; 191; 192, except (I)(A)(2) and (3) of Appendix D to Part 192; 193; 195, except 195.1(b)(2), (3), and (4); and 199 (October 1, 2015)
 R14-5-202(Q)(1): ASME Guide for Gas Transmission and Distribution Pipeline System, Guide Material, Appendix G-11-1983



- R14-5-202(Q)(2): ASME Guide for Gas Transmission and Distribution Pipeline System, Guide Material, Appendix G-11A-1983
- R14-5-203(C)(2)(a): Form PHMSA F 7100.1: Incident Report – Gas Distribution System (October 2014)
- R14-5-203(C)(2)(b): Form PHMSA F 7100.2: Incident Report – Natural and Other Gas Transmission and Gathering Pipeline Systems (October 2014)
- R14-5-203(C)(2)(c): Form PHMSA F 7100.3: Incident Report – Liquefied Natural Gas (LNG) Facilities (October 2014)
- R14-5-203(C)(3): Form PHMSA F 7000-1: Accident Report – Hazardous Liquid Pipeline Systems (July 2014)
- R14-5-204(A)(1): Form PHMSA F 7000-1:1 Annual Report for Calendar Year 20__ Hazardous Liquid Pipeline Systems (June 2014)
- R14-5-204(A)(2): Form PHMSA F 7100.1-1: Annual Report for Calendar Year 20__ Gas Distribution System (May 2015)
- R14-5-204(A)(3): Form PHMSA F 7100.2-1: Annual Report for Calendar Year 20__ Natural and Other Gas Transmission and Gathering Pipeline Systems (October 2014)
- R14-2-204(A)(4): Form PHMSA F 7100.3-1: Annual Report for Calendar Year 20__ Liquefied Natural Gas (LNG) Facilities (October 2014)

14. The full text of the rules follows:

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 5. CORPORATION COMMISSION – TRANSPORTATION

ARTICLE 2. PIPELINE SAFETY

Section

- R14-5-202. Construction and Safety Standards for Gas, LNG, and Hazardous Liquid Pipeline Systems
- R14-5-203. Pipeline Incident Reports
- R14-5-204. Annual Reports
- R14-5-205. Commission Investigations
- R14-5-207. Master Meter System Operators

ARTICLE 2. PIPELINE SAFETY

R14-5-202. Construction and Safety Standards for Gas, LNG, and Hazardous Liquid Pipeline Systems

- A. No change
- B. Subject to the definitional changes in R14-5-201 and the modifications noted in this Section, the Commission adopts, incorporates, and approves as its own 49 CFR 40; 191; 192, except (I)(A)(2) and (3) of Appendix D to Part 192; 193; 195, except 195.1(b)(2), (3), and (4); and 199(~~October 1, 2012~~ October 1, 2015), including no future editions or amendments, which are incorporated by reference; on file with the Office of Pipeline Safety; and published by and available from the U.S. Government Printing Office, 710 North Capital Street N.W., Washington DC 20401, and at <http://www.gpo.gov/fdsys/>. For purposes of 49 CFR 192, “Business District” means an area where the public congregate for economic, industrial, religious, educational, health, or recreational purposes and two or more buildings used for these purposes are located within 100 yards of each other.
- C. No change
1. No change
2. No change
- D. No change
- E. No change
1. No change
2. No change
- F. No change
- G. No change
- H. No change
- I. No change
- J. An operator of an intrastate pipeline transporting LNG, gas, or a hazardous liquid shall use a cathodic protection system designed to protect the metallic pipeline in its entirety, in accordance with 49 CFR 192, Subpart I, ~~October 1, 2010 (and no future amendments)~~, as incorporated by reference in subsection (B), ~~and copies available from the Office of Pipeline Safety and the United States Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954, except Sections (I)(A)(2) and (3) of Appendix D to Part 192 shall not be utilized. This modifies 49 CFR 192.463(a), 193.2629, and 195.571.~~
- K. No change



- L. No change
- M. No change
- N. An operator of an intrastate pipeline transporting gas or hazardous liquid that constructs an underground pipeline system using plastic pipe shall bury the installed pipe with at least 6 inches of sandy type soil, free of any rock or debris, surrounding the pipe for bedding and shading, unless the pipe is otherwise protected as approved by the Office of Pipeline Safety. Steel pipe shall be installed with at least 6 inches of sandy type soil, free of any debris or materials injurious to the pipe coating, surrounding the pipe for bedding and shading, unless the pipe is otherwise protected as approved by the Office of Pipeline Safety. This modifies 49 CFR 192.321, 192.361, and 195.246.
- O. No change
- P. No change
- Q. No change
 - 1. In the case of all gas except LPG, leakage surveys and grading shall be performed pursuant to the standards set by ASME Guide for Gas Transmission and Distribution Pipeline System, Guide Material, Appendix G-11-1983, including no future editions or amendments, which is incorporated by reference; on file with the Office of Pipeline Safety; published by and available from ASME, ~~Three~~ Two Park Avenue, New York, NY 10016-5990; and modified by omitting 4.4(c) and by replacing "should" with "shall" each time it appears.
 - 2. In the case of LPG, leakage surveys and grading shall be performed pursuant to the standards set by ASME Guide for Gas Transmission and Distribution Pipeline System, Guide Material, Appendix G-11A-1983, including no future editions or amendments, which is incorporated by reference; on file with the Office of Pipeline Safety; published by and available from ASME, ~~Three~~ Two Park Avenue, New York, NY 10016-5990; and modified by replacing "should" with "shall" each time it appears.
 - 3. No change
- R. No change
- S. No change
- T. An operator of an LNG facility shall ensure that nondestructive testing is completed for each weld performed on newly installed, replaced, or repaired pipeline or an appurtenance. This modifies 49 CFR 193.2303.
- ~~F.U.~~ No change
 - 1. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - 3. Within 48 hours after receiving telephonic notification pursuant to subsection (~~F U~~)(2), the Office of Pipeline Safety shall:
 - a. No change
 - b. No change
 - i. That the operator must have the removed portion of pipeline tested, in accordance with Office of Pipeline Safety directions, by an independent laboratory selected by the Office of Pipeline Safety as provided in subsection (~~F U~~)(5), to determine the cause or causes of the failure; or
 - ii. No change
 - 4. After providing telephonic notice as provided in subsection (~~F U~~)(3)(b), the Office of Pipeline Safety shall confirm its notification in writing;
 - 5. No change
 - a. No change
 - i. Determine, as provided in subsection (~~F U~~)(6), the independent laboratory that will do the testing and the period of time within which the testing is to be completed;
 - ii. No change
 - iii. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - 6. In determining an independent laboratory to perform testing required under subsection (~~F U~~), the Office of Pipeline Safety shall:
 - a. No change
 - b. No change
 - i. No change



- ii. No change
- c. No change
 - i. No change
 - ii. No change
- d. No change

~~U.V.~~ No change

~~V.W.~~ No change

~~W.X.~~ No change

R14-5-203. Pipeline Incident Reports

A. No change

B. No change

- 1. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
- 2. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - g. No change
- 3. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change

C. No change

- 1. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change



2. No change
 - a. Form PHMSA F 7100.1: Incident Report – Gas Distribution System (~~June 2011~~October 2014), including no future editions or amendments;
 - b. Form PHMSA F 7100.2: Incident Report – Natural and Other Gas Transmission and Gathering Pipeline Systems (~~December 2012~~October 2014), including no future editions or amendments; or
 - c. Form PHMSA F 7100.3: Incident Report – Liquefied Natural Gas (LNG) Facilities (~~June 2011~~October 2014), including no future editions or amendments.
3. An operator of an intrastate pipeline transporting hazardous liquid shall file a written incident report completed using Form PHMSA F 7000-1: Accident Report – Hazardous Liquid Pipeline Systems (~~December 2012~~July 2014), including no future editions or amendments, which is incorporated by reference, on file with the Office of Pipeline Safety, and published by and available from PHMSA as set forth in subsection (C)(2), any time the operator would have been required to make a notification as required under R14-5-203(B)(2).
4. No change
 - a. For an LNG or gas - incident, within 20 days after detection; and
 - b. No change
5. No change
6. After an incident involving shutdown or partial shutdown of a master meter system, an operator of a gas pipeline system shall request and obtain a clearance from the Office of Pipeline Safety before turning on or reinstating service to ~~a~~ the master meter system or portion of the master meter system that was shut down.

R14-5-204. Annual Reports

- A. No change
 1. Form PHMSA F 7000-1.1: Annual Report for Calendar Year 20__ Hazardous Liquid Pipeline Systems (~~June 2011~~2014), including no future editions or amendments, which shall be completed in accordance with the PHMSA instructions for the form;
 2. Form PHMSA F 7100.1-1: Annual Report for Calendar Year 20__ Gas Distribution System (~~January 2011~~May 2015), including no future editions or amendments, which shall be completed in accordance with the PHMSA instructions for the form;
 3. Form PHMSA F 7100.2-1: Annual Report for Calendar Year 20__ Natural and Other Gas Transmission and Gathering Pipeline Systems (~~December 2012~~October 2014), including no future editions or amendments, which shall be completed in accordance with the PHMSA instructions for the form; or
 4. Form PHMSA F 7100.3-1: Annual Report for Calendar Year 20__ Liquefied Natural Gas (LNG) Facilities (~~June 2011~~October 2014), including no future editions or amendments, which shall be completed in accordance with the PHMSA instructions for the form.
- B. No change

R14-5-205. Commission Investigations

- A. No change
- B. While investigating an incident, accident, or event, the Commission; or an authorized agent of the Commission may:
 1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change

R14-5-207. Master Meter System Operators

- A. No change
- B. An operator of a master meter system shall comply with this Section as a condition of receiving service from a provider. Noncompliance with this Section by an operator of a master ~~meters~~ meter system constitutes grounds for termination of service by the provider when informed in writing by the Office of Pipeline Safety. In case of an emergency, the Office of Pipeline Safety may give the provider oral instructions to terminate service, with written confirmation to be furnished within 24 hours.
- C. No change
- D. No change
 1. No change
 2. No change
- E. No change
 1. No change
 2. No change
 - a. No change
 - b. No change
 - c. No change



- F. No change
- G. No change
- H. No change
- I. No change
- J. No change
- K. No change
- L. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- M. No change
- N. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- O. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- P. In the event of an unknown failure of a gas pipeline resulting in a master meter system operator's being required to provide a report under subsection (Q) and in the operator's removing a portion of the failed pipeline, the following shall occur:
 - 1. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - 3. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - 4. No change
 - 5. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - 6. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - c. No change
 - i. No change
 - ii. No change
 - d. No change
- Q. No change
 - 1. No change



- a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change
 - vii. No change
 - viii. No change
- b. No change
- c. An event involving permanent or temporary discontinuance of service to a master meter system or any portion of a master meter system due to a failure of a leak test or for any purpose other than to perform routine maintenance; or
- d. No change
- 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
- 3. No change
- R. No change
- S. To ensure compliance with all applicable provisions of this Article, the Commission or an authorized representative thereof, may enter the premises of an operator of a master meter system to inspect and investigate the property, books, papers, electronic files, business methods, and affairs that pertain to the operation of the master meter system.

EXHIBIT 3

DOCKET NO. RG-00000A-15-0098

Public Comments & Staff and Commission Responses Thereto (formal comments provided in response to the Notice of Supplemental Proposed Rulemaking ("NSPRM"))

| Spectrum Comment | Staff Response | Commission Response |
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| <p>The notices were mailed to an old office address even though Spectrum changed its mailing address with Staff in Docket No. G-20923A-15-0030 ("Complaint case"). Because the Notice of Proposed Rulemaking ("NSPRM") was sent to the old address, Spectrum had no opportunity to comment.</p> | <p>The address on file with Staff for Desert Gas, LP ("Desert Gas") was updated when Staff was made aware of the correction. The NPRM, Notice of Emergency Rulemaking ("NERM"), and NSPRM were all published in the <i>Arizona Administrative Register</i>, providing notice to the public. Spectrum provided comments to the NSPRM during the formal comment period and has had an opportunity to be heard.</p> | <p>The Administrative Procedure Act ("APA"), A.R.S. §§ 41-1001 et seq., generally requires that notice of rulemaking activity be provided through publication in the <i>Arizona Administrative Register</i>. The additional notice provided by the Commission through mailing to stakeholders was provided as a courtesy. The Commission regrets that the courtesy copies were sent to Desert Gas using an outdated address. However, because Spectrum was able to comment on the NSPRM, Spectrum has had an opportunity to be heard, and no additional action is needed.</p> |
| <p>The rule change in A.A.C. R14-5-202(T) ("Rule 202(T)") only impacts two operators in the state, and Applied LNG Technologies ("ALT") was as surprised as Spectrum was.</p> | <p>Staff is unaware of any comments or objections from ALT. ALT was included on the proposed service list filed by Staff and has been included on the service list throughout this matter. The number of facility operators impacted by a rule change does not lessen the appropriateness of adopting a safety rule change. Additional operators may begin operating within Arizona. Additionally, transmission pipeline operators are already required to comply with a similar requirement. Staff acknowledges that there will be a cost impact to liquefied natural gas ("LNG") facility operators that are not already performing nondestructive testing of all welds performed on newly installed, replaced, or repaired pipeline or appurtenances. The Commission specifically added that impact to the Economic, Small Business, and Consumer Impact Statement ("EIS") adopted in Decision No. 75250. Staff believes that Rule 202(T) provides flexibility because it does not specify the technology to be used. The choice of technology will impact costs. Additionally, Rule 202(T) is prospective and will only impact new welds.</p> | <p>Rule 202(T) establishes a safety standard that will apply equally to any LNG facility that operates in Arizona. While that list may only include the facilities of two operators currently, it may include more in the future. The Commission agrees with Staff that the number of entities subject to a rule establishing a generally applicable standard to protect health, safety, and welfare is not a measure of the appropriateness of the rule. Additionally, ALT is on the service list for this matter, has been sent numerous documents regarding the rule changes pursued by the Commission, and has not made any comments regarding Rule 202(T) or any other aspect of the rulemaking. Because none of the mail sent to ALT has been returned as undeliverable, the Commission concludes that ALT has received ample notice of this matter.</p> |

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| <p>Spectrum does not understand why the Commission feels the need to modify 49 CFR § 193.2303 when the other 49 states accept it. Spectrum does not see the rationale for this change and wonders what safety or economic data was relied upon for this change. The LNG industry is being singled out, and Spectrum is not aware of any pipe weld failure to suggest change is needed. This rule change will give pause to other LNG investments that may be made in Arizona.</p> | <p>Arizona's pipeline safety program meets federal audit standards and maintains a very proactive regulatory oversight safety program. Other states typically follow Arizona's example. The process of liquefying natural gas is cryogenic and involves both increasing pressure and decreasing temperature to change natural gas into a liquid. The pressure is comparable to that experienced by transmission pipe, for which 100 percent nondestructive testing is already required for new welds, although transmission pipe is not subjected to comparable operating temperature stresses. Rule 202(T) puts LNG facilities on equal footing with facilities that operate under comparable pressures.</p> | <p>The Commission previously determined, for intrastate transmission pipeline transporting gas and operating at a pressure at or above 20 percent of specified minimum yield strength ("SMYS"), that it was appropriate to establish a 100-percent nondestructive testing requirement for welds performed on newly installed, replaced, or repaired pipeline or appurtenances. (See A.A.C. R14-5-202(S).) That the transmission pipeline testing requirement was supported by Southwest Gas lends credence to the Commission's position that such a standard was appropriate to enhance safety and was not unduly burdensome. The Commission believes that it is likewise appropriate to enhance the safety of LNG facilities by requiring 100-percent nondestructive testing of field welds for LNG pipeline, which is subject to similar operating pressures.</p> |
| <p>Spectrum takes issue with statements made at the June 18 hearing suggesting that the rule changes were required only to maintain compliance with the federal code and that funding would be at risk if the rule changes were not adopted. "The notion that funding would be at risk if the ACC didn't adopt the Federal code is false and deceptive. Should the enforcement department be allowed to write the rules? This is a public policy issue and should be treated as such."</p> | <p>At the June 18 oral proceeding, Staff stated that the rulemaking is primarily to adopt updates to the CFRs and additionally made some clarifications to the rules. The text of the rules, with the changes identified, was published in the <i>Arizona Administrative Register</i> in accordance with proper rulemaking procedure. In accordance with the Federal Certification and Grant Program, each state Pipeline Safety Program must adhere to federal certification guidelines to assure full funding. The Pipeline Safety Section is audited annually for compliance with federal guidelines. Failure to adhere to the guidelines will result in decreased funding. Safety is a public policy concern. This does not change the analysis of the appropriateness of adopting the rule changes.</p> | <p>The Commission agrees with Staff that the primary purpose of the rule revisions was to update the incorporations by reference to federal regulations and forms, which were made to ensure that the Commission's Pipeline Safety Program maintained eligibility for federal funding. Spectrum is incorrect that failure to update the incorporations by reference would not jeopardize that federal funding, as the Commission's certification under 49 U.S.C. § 60105 is dependent upon the Commission's timely adoption of the applicable safety standards prescribed under 49 U.S.C. Chapter 601. Many of the issues before the Commission can be described as public policy issues. This label does not remove the issue from treatment through rulemaking. Indeed, when the issue implicates safety concerns, and it is appropriate to address the issue through a safety standard that must apply across the board to certain activities or types of facilities, the APA generally requires that the</p> |

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| <p>This change impacts ongoing work Spectrum has in progress. On July 20, as part of the Settlement Agreement in the Complaint case ("Settlement Agreement"), Spectrum submitted a package to the Pipeline Safety office advising of a modification to its Desert Gas plant. The package included the x-ray strategy for the package, which was approved by a Pipeline Safety office email. Installation is underway, and Spectrum would like to avoid a conflict over the x-ray requirements. Spectrum has other projects in process as well that will be impacted by Rule 202(T).</p> | <p>Rule 202(T) went into effect on an emergency basis on December 15, 2015. Certain facilities were assembled and welds were performed before Rule 202(T) became effective. Those welds were performed in a manner consistent with the rules then in effect and need not be tested under Rule 202(T). New welds performed after December 15, 2015, are subject to the new testing requirement in Rule 202(T). Additionally, Staff noted that Rule 202(T) does not require that nondestructive testing be done by x-ray.</p> | <p>standard be adopted through rulemaking. (See A.R.S. § 41-1001(19).)</p> <p>The Commission agrees with Staff that any weld described in Rule 202(T) and performed on or after December 15, 2015, is required to be nondestructively tested before it is placed into service.</p> |
| <p>The Settlement Agreement includes 100 percent testing for only the welds that were the cause of the complaint, not for all future welds, although that is what Staff had desired.</p> | <p>Settlement Agreements generally apply only to the matter at hand and not to future matters. Staff does not believe that the Settlement Agreement addressed the issue of nondestructive testing where no weld failure had been detected. In one section, the Settlement Agreement addressed welds performed specifically in connection with the methane compressor the Complaint case concerned. In another section of the Settlement Agreement, Desert Gas agreed that all future welds would meet the requirements of 49 CFR § 193.2013(b)(C), which is the incorporation by reference of American Society of Mechanical Engineers ("ASME") standards for quality of welds. The ASME requirements are only implicated when failed welds are detected and do not address the frequency of nondestructive testing on a standard basis. This situation is addressed under National Fire Protection Association ("NFPA") Code 59A, § 6.6.3.2.</p> | <p>The Commission agrees that the Settlement Agreement required 100 percent nondestructive testing only for the welds at issue in the Complaint case. The Commission notes that the Settlement Agreement also provided that "none of [its] provisions may be referred to, cited, or relied upon by any other Party as precedent in any proceeding before [the] Commission . . . for any purpose except in furtherance of the purposes and results of [the Settlement] Agreement." The Settlement Agreement does not and could not resolve the Commission's policy as to all field welds made in all LNG facilities, not just the Ehrenberg facility operated by Desert Gas, whereas Rule 202(T) does. The appropriate manner for the Commission to establish a 100-percent nondestructive testing standard for such welds is through rulemaking under the APA, and the Settlement Agreement did not remove Desert Gas's obligation to comply with rules promulgated by the Commission after execution of the Settlement Agreement.</p> |
| <p>This rule change has a significant economic impact. Has the Commission calculated the increased cost of future expansion for LNG plant owners and considered how this action will stymie growth?</p> | <p>The costs associated with the nondestructive testing can vary widely based upon the scope of the work, the number of welds, and the method of testing used. The rule change does not specify the testing methodology, so operators can select methods that</p> | <p>The Commission concurs with Staff's assessment that the economic impacts of Rule 202(T) will vary depending upon the testing methods used, which are determined by operators, as well as the extent to which new welds are made at a facility.</p> |

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| | are already approved under the ASME incorporated by reference in the CFRs and in the Commission's rules. Because the rule change applies only to new welds performed on jurisdictional pipeline at the facility location, as part of installation, repair, or replacement of pipeline or appurtenances, and not to any welds made on shop fabricated units purchased and installed as single components, the total number of welds to be tested is limited. | The Commission believes that the additional expense incurred due to 100-percent nondestructive testing of new welds made at an LNG facility will result in enhanced safety and, if the nondestructive testing detects and causes an operator to require remediation of faulty welding, may result in significant savings to the operator by preventing the damages that could result from pipeline breach. |
| In general, rules, regulations, or statutes are created by one body and enforced by others. Was the source for this rule the same as the enforcement? Is there any check and balance in the process? | Staff does not agree that entities that promulgate rules do not enforce those rules. One of the defining characteristics of administrative agencies is that they combine aspects of legislative (creating new requirements), executive (enforcing jurisdictional requirements), and potentially judicial (if enforcement is adjudicated internally) functions. The federal regulatory regime governing pipeline safety also combines rulemaking and enforcement in one entity. Arizona statutes (A.R.S. §§ 40-441 et seq.) authorize the Commission to promulgate rules for the enhancement of pipeline safety and to enforce compliance with those rules. Staff is proposing the rule, but the Commission must vote to adopt the proposed rule changes in a process that follows APA requirements. The Commission is an elected body. Because the rules do not fall within the Commission's exclusive ratemaking authority, the rules also must be reviewed and approved by the Attorney General in order to become effective. | Staff's response is appropriate. The Commission, similar to administrative agencies at other levels of government, is authorized by law to promulgate rules and to enforce those rules. The Arizona Legislature has provided the Commission this authority with regard to pipeline safety through A.R.S. §§ 40-441 et seq. It is the Commission, rather than Staff, that determines whether to propose a rule and whether a proposed rule will be adopted as a final rule. It is also the Commission rather than Staff that ultimately decides, through a formal Decision made after an evidentiary hearing presided over by an impartial administrative law judge, whether any formal enforcement action will be taken against an operator for failure to comply with a rule. In addition, revisions to the Commission's pipeline safety rules can only become effective upon certification from the Attorney General under A.R.S. § 41-1044, as the rules do not fall under the Commission's exclusive and plenary constitutional ratemaking authority. Checks and balances are in place, as required by applicable laws. |
| Spectrum's plant integrates several skid-mounted package compressors and a few other prefabricated skids with pipe on them. These packages can be installed and removed and are always manufactured elsewhere. Is all of the on-skid piping subject to Rule 202(T)? If so, this will preclude Spectrum from being able to use packaged compressors and systems without having | Rule 202(T) would apply only to those welds that are performed on site at the facility. Prefabricated assemblies would not be impacted by Rule 202(T). Nonetheless, it will remain the operator's responsibility to provide documentation demonstrating that the prefabricated assemblies have been constructed and tested in accordance with other existing regulations and adopted standards. | The Commission agrees that Rule 202(T) applies only to welds performed on site at an LNG facility, "on newly installed, replaced, or repaired pipeline or an appurtenance." Thus, Rule 202(T) would not require Desert Gas to complete nondestructive testing of welds made in the manufacture of a prefabricated skid or other packaged plant item. |

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| <p>them built according to the rule. The gas producing states have thousands of these units in operation and don't require 100 percent of welds to be tested. Did anyone think about this?</p> <p>Spectrum has been told that the upshot of Rule 202(T) is the elimination of a particular exception provided in NFPA 59A § 6.6.3.2. Why does the Commission believe the NFPA erred in providing the exception, and what is the basis for the Commission's adopting rules that exceed the Pipeline and Hazardous Materials Safety Administration ("PHMSA") code and the American National Standards Institute ("ANSI") piping codes, which are the industry standards throughout the industrialized world?</p> | <p>Staff believes that Rule 202(T) will improve safety and that, from a policy perspective, standards articulate minimum conduct (the floor). Staff believes that with regard to public safety, standards driving force behind rule changes should not be to treat the floor as the ceiling as to what constitutes reasonable or appropriate requirements. Staff believes that a safety improvement is appropriate if it can be reasonably anticipated to improve a safety concern. Rule 202(T) will improve safety by requiring full installation, repair, or replacement of LNG pipeline to the increased testing requirements, comparable to the testing requirements for transmission pipeline, are reasonable because of the pressure and thermal stresses to which the pipeline is exposed.</p> | <p>It appears that Spectrum may have misunderstood the applicability of Rule 202(T) and that this misunderstanding contributed to Spectrum's conclusion that Rule 202(T) presents a great burden to Desert Gas's operations. NFPA 59A § 6.6.3.2 generally requires full radiographic or ultrasonic examination of all circumferential butt welds, but provides exceptions for certain liquid drain and vapor vent piping and C), for which 30 percent of each day's nondestructively welded pipe joints must be B31.3. Rule 202(T) eliminates these exceptions for any pipe welds falling within its requirements. The Commission agrees with Staff that industry standards establish minimum requirements. Rule 202(T) will enhance the safety of LNG facilities. The Commission further believes that PHMSA's inquiry into revising the federal pipeline safety regulations applicable to LNG facilities suggests that PHMSA also sees room for industry improvements over the current federal in by the Commission. The relevant inquiry engaged whether safety improvements regarding Rule 202(T) is made for welds performed at LNG facilities in Arizona. The Commission concluded that safety improvements can and should be made.</p> |
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Discussion Resulting from Procedural Order of January 28, 2016, and Commission Responses Thereto

On January 28, 2016, a Commission Administrative Law Judge issued a Procedural Order ("P.O.") requiring Staff to file responses to specific questions and allowing Spectrum and any other interested person to file responses to Staff's responses. Introductory statements made by Spectrum, the questions posed by the P.O., and the discussion resulting therefrom, are set forth below, along with the Commission's responses.

| P.O. Question | Staff Response to P.O. Question | Spectrum Response to Staff Response | Staff Reply to Spectrum Response | Commission Response |
|---------------|---------------------------------|--|---|--|
| N/A | N/A | <p>Spectrum is a regional LNG producer and owns Desert Gas. Desert Gas serves over 50,000 gallons per day of LNG from its Ehrenberg plant, for fueling stations in Arizona and southern California, but is a relatively small operation. Desert Gas does not transport or transmit LNG through a transmission main or otherwise outside its property lines. Spectrum has extensive experience with regulation of LNG.</p> <p>In the Complaint case, Desert Gas worked with Staff to enter into a Settlement Agreement that adopted several proactive measures that go beyond federal and state regulatory requirements and were specifically tailored to ensure safety at the Ehrenberg LNG plant. The subject matter of the complaint involved no release of natural gas in any form, no injury to persons, no damage to property, and no pipe weld failures that allowed pipe to physically come apart. Spectrum believes that the measures it agreed to in the Settlement Agreement are cost effective and will lead to significantly greater assurances of safety within its Ehrenberg operations than will Rule 202(T), which will impose</p> | <p>The PHMSA rulemaking process is at a germinal stage, and it could be three to five years before any federal rule change is made. Until recently, Robert Miller, Supervisor of the Commission's Pipeline Safety Program, was the national chair of the National Association of Pipeline Safety Regulators ("NAPSR"). After his chairmanship, Mr. Miller continued to be a voting board member of NAPSR. As such, Mr. Miller voted in support of holding the workshops referenced by Spectrum. [Mr. Miller retired from the Commission in May 2016.] State regulators in the field of pipeline safety generally have more expertise than, and are relied upon by, federal regulators. Staff is not persuaded that PHMSA's efforts reduce or eliminate the appropriateness of adopting Rule 202(T). Rule 202(T) is not in conflict with current federal regulations and is permissible because state agencies are permitted to adopt more stringent requirements. Staff believes that Rule 202(T) treats cryogenic facilities the same as the Commission's rules already treat other high pressure pipelines that carry hazardous</p> | <p>The Commission understands that Desert Gas is likely to experience some additional expenses as a result of Rule 202(T), but believes that Desert Gas can mitigate those expenses through the timing of the testing and the choice of testing methods. As stated previously, the Settlement Agreement addressed specifically the issues that had arisen in the Complaint case, and it applies only to Desert Gas. While the Commission could have decided to propose rulemaking to require all LNG facility operators to comply with the safety-enhancing provisions included in the Settlement Agreement, the Commission instead has adopted through the NERM the more flexible requirement in Rule 202(T), which corresponds to the requirement previously adopted for transmission pipeline in R14-5-202(S). The Commission notes that the Settlement Agreement specifically required use of x-ray testing, which Rule 202(T) does not. The Commission further points out that its Pipeline Safety Program personnel are nationally recognized for their expertise, which will be shared during the PHMSA regulatory process. Should PHMSA actively</p> |

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| | | <p>significant additional cost without any significant benefit. If Spectrum must comply with Rule 202(T) in addition to the terms and conditions of the Settlement Agreement, Spectrum will suffer adverse economic impact.</p> <p>Currently, 49 CFR § 193.2013 adopts the NFPA 59A standard (§ 6.6.3) for welded pipe tests for LNG, requiring that all circumferential butt welds be examined fully by radiographic or ultrasonic inspection, except that for pressure piping operating at above -20° F, only 30 percent of each day's circumferential welded pipe joints must be tested over the entire circumference. Rule 202(T) removes this exception. Rule 202(T) is unnecessary and unduly burdensome and fails to take into account the current PHMSA process to examine regulation of LNG, which includes experts from various perspectives. PHMSA has more experience and background in cryogenics and in determining the appropriate level of nondestructive testing for LNG facilities than does the Commission. The Commission should defer to the PHMSA process to define the necessary safety regulations for LNG facilities.</p> | <p>liquids or natural gas. Operators are already required to perform 100 percent nondestructive testing on all new welds on transmission pipeline. (See R14-5-202(S).) Some of Spectrum's piping is 49 CFR Part 192 piping operating at transmission pressures. Facilities used in the cryogenic phase of the liquefying process are subject to unique thermal stresses. Ensuring the integrity of welds for such facilities is no less important than it is for transmission pipelines.</p> | <p>determine that 100-percent nondestructive testing of LNG pipeline welds in the field is inappropriate for some reason, the Commission will consider PHMSA's determination and could decide to revise Rule 202(T) accordingly. However, as was noted by Staff, PHMSA's consideration of appropriate revisions to the regulation of LNG facilities is only beginning, and the process may take several years. The Commission would not best serve the public interest by delaying permanent adoption of Rule 202(T), a standard that the Commission expects to enhance the safety of LNG facility operations.</p> |
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| | | Spectrum's Arizona operations have no piping that is under both high pressures and low temperatures. Desert Gas's piping that contains LNG is at low pressure and low temperatures and consists of stainless steels and aluminum, which are not weakened by low temperatures. | | |
| 1. What are the technologies available to nondestructively test welds as required under Rule 202(T)? | The standard testing methods are liquid penetrant, magnetic particle, radiography (x-ray), and ultrasonic. These methods are recognized by NFPA 59A (2001) and ASME Standard B31.3 (1996), both of which are incorporated by reference in 49 CFR § 193.2013. | Staff did not indicate what the standards are regarding each of the tests it lists, including frequency of testing. ASME B31.3 at § 344.1.3 defines three different terms for examination—100 percent, random, or spot. Spectrum maintains that 100 percent nondestructive testing is not necessary and will not provide significant benefit to justify the increased costs. | Staff was asked to identify the permissible methods of nondestructive testing and did so, including attached copies of the standards, which speak for themselves in terms of frequency. The standards do not require 100 percent testing of transmission main welds, although Arizona does under R14-5-202(S). The ASME and NFPA standards do not create ceilings for what constitutes appropriate frequency for nondestructive testing. | Staff's response identified the available testing methodologies, as requested. |
| 2. What is the estimated cost to test a weld using each of the technologies identified in response to question [1]? | Staff obtained estimates from three Arizona testing laboratories for each method. It takes approximately 30 to 60 minutes to set up portable testing equipment and between 10 and 30 minutes to test each weld, depending on field conditions and the testing method used. Radiographic testing generally takes the longest. However, testing laboratories uniformly charge by the hour rather than by weld. Each Arizona testing lab | Staff's response is largely speculation. No one can be sure what the cost impacts of Rule 202(T) will be, but they will be significant. Staff's response is based on production work and does not reflect what will likely be found in the field and, further, does not include the cost associated with a loss of production from the facility. For a repair that involves welding at the plant, Staff's estimate includes only the cost of the | Staff agrees that its response is speculative, as examples are. Staff provided reasonable approximations based on current charges and industry experience. Staff did not include lost production cost in its estimates because nondestructive testing must be completed before facilities are placed into service. An operator will have some control over the lost production costs experienced based upon its decision as to the timing of | The Commission finds Staff's estimates helpful in understanding the probable costs of testing under Rule 202(T). As stated previously, the Commission believes that an LNG facility operator will have the ability to mitigate its testing costs through its choices regarding the timing of the testing and the nondestructive testing technology chosen. These choices will also influence the duration of any period of |

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| | <p>would charge for a full day's labor per technician because the Arizona LNG facilities are outside of the lab's vicinity. Each lab would also charge a flat rental cost for the mobile testing lab and darkroom facilities, at a cost of approximately \$700 per day, and would charge travel expense of approximately \$0.75 per mile, per diem of \$175 per technician, and the costs of consumable testing materials. The costs for the different methods, not including the \$700 flat rental cost, \$135/technician per diem, and \$0.75 per mile of travel, would be approximately as follows:</p> <p>Radiography: Labor cost of \$145/technician/hour for 8 hours, film cost of \$36 to \$41 per weld;</p> <p>Ultrasonic: Labor cost of \$80/technician/hour for 8 hours; Liquid penetrant: Labor cost of \$75/technician/hour for 8 hours; \$15 per can of liquid penetrant used; and</p> <p>Magnetic particle: Labor cost of \$75/technician/hour for 8 hours and approximately \$35/day for materials used.</p> <p>The time to perform a weld (approximately 45 to 60 minutes for the welds at issue in the Complaint case) exceeds the time to nondestructively test a weld.</p> | <p>inspection work. The full economic impact of Rule 202(T) would include the loss of production. Rule 202(T) would impact testing of 95 percent of the welds performed on any new facilities Spectrum contemplates purchasing 10 acres of land from the State of Arizona for the purpose of investing in a new LNG plant adjacent to the existing plant. The project has been suspended due to "economic head winds in the energy sector," but any added costs would further degrade its chance of success. If the LNG sector is unnecessarily burdened with additional regulations, it will locate elsewhere. PHMSA is undertaking a full evaluation of regulation of LNG facilities. Spectrum will participate and believes that the appropriate method to modify the code is to make a proposal before a body of experts in the welding of carbon steel pipe. Staff should submit written comments to PHMSA. If PHMSA agrees, the change can be included in the next edition of the federal code.</p> | <p>nondestructive testing (on a rolling basis during construction or only at the end of all construction). Staff acknowledges that the rule will impose a cost on LNG facility operators, but has considered the costs and believes that the costs will vary depending on the circumstances and how an operator manages welding projects. Whether the cost of testing renders a particular project economically infeasible is not the threshold for appropriateness of a rule, particularly a safety rule. Also, the costs will be lower for LNG facilities constructed closer to locations that have local nondestructive test service providers.</p> | <p>non-production that results not simply from the need for repair but from the requirement for testing to be completed. Additionally, an operator's chosen site for an LNG facility will continue to have great influence upon the costs of testing and the duration of any delay in production that results therefrom, due largely to the proximity of testing services to the site. It is up to an LNG operator to determine whether new or expanded LNG facility operations are economically feasible. Rule 202(T) should not have a great impact upon that decision, as the costs to comply with Rule 202(T) should not be substantially greater than the costs to comply with the prior requirement to test 30-percent of each day's welds. Indeed, costs may be lower if all nondestructive testing is completed at the end of construction, thereby saving on minimum daily labor costs. While it is appropriate for the Commission to consider and evaluate the estimated economic benefits and burdens associated with any rule adopted, Spectrum's speculation regarding the impact that the enhanced safety standards could have upon potential future expansion plans should not serve as a deciding factor in the</p> |
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| | <p>Because the existing rule already required 30 percent of each day's welds to be nondestructively tested, and each testing lab charges for a full day's labor, the major difference in costs created by Rule 202(T) arises from the incidental costs of additional consumable testing materials such as film or liquid penetrant. Overall testing costs may even decrease because the testing could be done after completion of welding activity performed over multiple days, rather than being done each day, as required by 49 CFR § 193.2013. Staff believes that any cost increase will be incidental.</p> | | | <p>Commission's analysis. Spectrum has criticized the data provided by Staff, but has itself provided no data to support its criticisms. As stated previously, Commission Pipeline Safety Program personnel will be participating in the PHMSA process, as they are recognized experts in the field.</p> |
| <p>3. To Staff's knowledge, has any other U.S. state, any other jurisdictional governmental entity, or any recognized industry standard-setting entity adopted a requirement substantially similar to that in Rule 202(T) or more stringent than the requirement in 49 CFR 193.2013? If so, please identify each such entity and provide a copy of the requirement adopted.</p> | <p>Staff is not aware of any other U.S. state's or other jurisdictional governmental entity's having adopted a requirement like that in Rule 202(T). Arizona's pipeline regulations are generally proactive and ahead of other states. The NFPA 59A and ASME B31.3, adopted in 49 CFR Part 193, require 100 percent nondestructive testing of several types of welds. (See NFPA 59A at §§ 6.6.3.2 and 6.6.3.3; ASME B31.1 at § 341.43(b).)</p> | <p>Spectrum knows of no other state, jurisdictional government entity, or industry standard that has adopted a requirement substantially similar to or more stringent than Rule 202(T). Both the NFPA and PHMSA provided an exception for "warm pipe" (pipe operating at temperatures above -20° F) by allowing 30 percent of such pipe's welds to be nondestructively tested. Spectrum's Arizona operations involve 95 percent warm pipe. NFPA, ASME, and PHMSA are the entities with primary expertise in this area. The PHMSA process should be allowed to "play itself out"</p> | <p>Spectrum's assertion that PHMSA and industry are the entities with the primary expertise regarding LNG safety regulation is erroneous. PHMSA works in partnership with NAPS and recognizes that in matters of intrastate safety regulation, including for LNG facilities, the states possess the leading source of expertise.</p> | <p>While the Commission acknowledges that it would be easier not to be the first regulatory body to adopt a safety standard, the Commission does not believe that being the first equates to being wrong. The Commission's Pipeline Safety Program personnel have extensive experience and knowledge in the areas of pipeline safety and welding. These personnel will provide their expertise to PHMSA through the LNG Workshop process. The existence of such an effort by PHMSA reinforces for the Commission its own recognition that there are safety improvements to be made in</p> |

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| | | <p>before any changes are made that could significantly impact small operations of LNG facilities. Spectrum provided the text of an email sent by PHMSA on March 9, 2016, announcing an upcoming two-day LNG Workshop being held May 18-19, 2016. According to the email, the LNG Workshop was to include federal and state regulators, emergency responders, NFPA 59A technical committee members, industry, and interested members of the public.</p> | | <p>LNG facility operations. Rule 202(T) will help to bring about such safety improvements.</p> |
| <p>4. What caused Staff to conclude that it is necessary to require nondestructive testing of each weld performed on site at an LNG facility on newly installed, replaced, or repaired LNG pipeline or appurtenances?</p> | <p>Staff has recently grown concerned by the quality of welding performed at LNG facilities, such as concerning the welds at issue in the Complaint case. In that case, Desert Gas performed a plant upgrade involving 83 welds and used two contracted welders. Fewer than half of the required 30 percent of daily welds were nondestructively tested. After the upgraded facility was operational, additional remedial nondestructive testing was done, revealing that 8 out of 15 additionally tested welds were faulty. Upon re-welding, one repaired weld was still faulty. Staff found the greater-than-50 percent failure rate "profoundly troubling." Staff believes that had 100 percent testing been required at the time, the issue</p> | <p>Spectrum worked with Staff in the Complaint case to develop a Settlement Agreement with measures that go above and beyond the current rules and that will be as or more cost effective in providing assurances of safety. No gas was ever released, and no piping physically came apart due to failed welds. The problem involved issues with the welding contractor Spectrum hired, which produced substandard quality welds. Spectrum paid a significant fine and agreed to pay a higher fine should the problem recur. 100 percent nondestructive testing is not the failsafe the rule would suggest. X-ray examination can be useful in determining the quality of a weld, but cannot accurately</p> | <p>Staff acknowledges that Spectrum has complied with the Settlement Agreement from the Complaint case and notes that the Settlement Agreement required Desert Gas to perform 100 percent nondestructive testing of the welds in question. The Settlement Agreement binds only Staff and Spectrum, while a rule change would impose the requirement on all operators throughout the state. Spectrum already is not the only LNG facility operator in Arizona, and another LNG storage facility is under construction in Tucson. That and any other new LNG facility will be subject to Rule 202(T).</p> | <p>As stated previously, the Settlement Agreement approved in the Complaint case applies only to Desert Gas, not to any other LNG facility operator. The appropriate manner for the Commission to adopt generally applicable safety standards for LNG facilities is through rulemaking, not through a Settlement Agreement in one specific case. Rule 202(T) applies to the other LNG facility currently operating in Arizona and to future LNG facilities and does not require that only x-ray testing be used. Had Desert Gas completed the 30-percent nondestructive testing required for its daily welds, Desert Gas may have detected the faulty nature of the welds sooner and may have saved itself some difficulty and expense. A</p> |

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| | (which ultimately was attributed to one of the contracted welders being unqualified to perform the work required) would have been identified and rectified before the upgraded facility was operational. Welding and material failure are the second leading cause of pipeline failures in the nation. The greatest risk of failure for a faulty weld is when it is first brought under full operating stress. It may be cheaper for an LNG facility operator using contracted welders to identify and have faulty welds repaired prior to initiating operations for the welded plant because identifying problems while the welding activity is ongoing means that the welders will still be available to perform necessary remedial work. Demand and lack of natural gas storage in Arizona may lead to growth in LNG operations in Arizona. Staff foresees demand for LNG peak-shaving plants. Also, the American Gas Association noted in August 2013 that natural gas supplies nearly one-fourth of all energy used in the U.S.. The U.S. Department of Energy projects that consumption of natural gas will increase 11 percent by 2030. | predict physical failure. Under the various codes, each weld is permitted a certain percentage of flaws. Examination of x-ray tests of pipe welds are subject to interpretation, as Spectrum has experienced firsthand. The events that gave rise to the Complaint case were independent of the percentage of testing required. Spectrum acknowledged that mistakes were made. But neither that incident nor the possibility of future facilities justified Rule 202(T) when Spectrum has expended significant costs to implement the measures agreed to in settling the complaint from the Complaint case. | | blanket requirement for 100 percent of welds to be nondestructively tested before the welds are placed into service is very clear and will avoid any potential confusion or misunderstanding regarding the testing required, which should simplify compliance efforts. |
| 5. Is Staff aware of any incidents of weld failure in LNG | Staff is aware of one incident, but notes that PHMSA has only | Spectrum disagrees with Staff's response for multiple reasons. | Regarding peak shaving facilities, Staff reiterates that the | The Commission finds persuasive Staff's reasoning that |

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| <p>facility pipeline or aperturances in the U.S. or any other country? If yes, please identify where and when the incident occurred, identify what entity or entities owned and operated the affected LNG facility pipeline or aperturances, describe any findings regarding the cause of the incident and identify by whom those findings were made, and describe the physical and economic damages caused by the incident.</p> | <p>required LNG operators to file annual and incident reports since 2011 and that no regulations required reports of failures prior to that time. "Additionally, a large number of LNG facilities, mostly peak shaving operations, are still not regulated and reports of failures would go unreported unless they were large enough to garner media attention."</p> <p>On December 18, 2014, at the Intermountain Gas LNG facility near Nampa, Idaho, a weld located inside a tube within an economizer component failed, resulting in a leak of natural gas at a pressure of 600 psi. The leak caused the economizer box to rupture, which caused personnel to activate the emergency shutdown of the LNG facility. There were no injuries or fatalities as a result of the failure, but 185,000 cubic feet of natural gas were released, and property damages exceeded \$102,000.</p> | <p>First, Staff is incorrect that peak shaving LNG facilities are not regulated, as they clearly are within the scope of 49 U.S.C. § 60102 and the scope of PHMSA regulations starting at 49 CFR § 193.2001. It is common knowledge in the North American LNG industry that 49 CFR Part 193 was written and adopted specifically in response to growth in the number of peak shavers being built in the northeast.</p> <p>Second, the Intermountain Gas incident does not appear to be material to Spectrum's operations, and it involved an economizer with prefabricated welds delivered to the site. The economizer's prefabricated welds would not have been subject to testing under Rule 202(T).</p> <p>Third, several regulations indicate reporting requirements (such as 49 CFR § 193.2011). Spectrum strongly disagrees that failures at a large number of LNG facilities would go unreported, to the extent that those failures would pose a safety threat to persons and property.</p> | <p>Commission is not bound to treat federal regulations as the ceiling on what is appropriate regulation by the states. Federal regulators already defer to the greater expertise of state regulators in this area.</p> <p>Contrary to Spectrum's assertions, the Intermountain Gas incident demonstrates that improper welds on components that operate under the pressures and temperature variations present at an LNG facility can and do fail. The fact that the failed weld was performed in a tightly controlled factory setting reinforces Staff's view that welds performed under field conditions, where performance of a proper weld is more difficult, must be subjected to full examination.</p> <p>The reporting requirements for leaks and spills at LNG facilities only came into effect in 2011, and the requirements apply only to LNG facilities regulated by PHMSA.</p> | <p>if a weld performed under presumably favorable factory conditions can fail and cause a rupture and release of large quantities of gas, a weld performed under less favorable field conditions also could fail and cause such release. Should such an incident occur, the monetary value of the losses incurred by Desert Gas (both in product and due to damages) could exceed any added costs that would be incurred as a result of the 100 percent nondestructive testing requirement in Rule 202(T). Additionally, public health and safety would be jeopardized.</p> |
| <p>6. What is the operating pressure present in typical LNG pipeline and aperturances used in the same manner as those at Desert Gas's LNG facility?</p> | <p>Desert Gas's LNG plant operation and maintenance manual states that normal operating pressures prior to starting up the turbo-expanders range from 15 psi at the LNG</p> | <p>There is no "typical LNG pipeline." Spectrum has a very small percentage of piping (less than 300 feet) operating at low temperatures. Most of Spectrum's piping is pressure</p> | <p>Staff is not just concerned about "cold" pipe. Staff is concerned about the integrity of welds that are subjected to high pressures and to welds that are subjected to high pressures and cryogenic</p> | <p>The Commission shares Staff's concern regarding the integrity of field welds subjected to high pressures, regardless of the temperature of the gas within.</p> |

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| | <p>storage tanks to 690 psi discharge pressure at one of the methane compressors. The inlet pressure from the TransCanada pipeline facility that feeds the LNG facility is approximately 630 psi.</p> | <p>pipng subject to ASME B31.1, § 345, for which the 30 percent testing exception under NPPA 59A, § 6.6.3.2 applies because it is operating above -20° F. Generally, the highest pressure at which Spectrum handles LNG is around 100 psi, downstream of the truck loading pump when filling a trailer. Normal trailer pressure after loading is 15 psi. As a comparison, city transit buses and CNG fueled cars have pressure of 3,500 psi.</p> | <p>temperatures. The cryogenic liquefying process will involve facilities that are "warm" and under high pressure, facilities that are "cold" and under high pressure, and facilities that are "cold" and under negligible pressure. Staff has no reason to dispute that the "cold" facilities under significant pressure are limited. However, there are facilities in Spectrum's LNG plant that will experience pressures as high as 1,000 psi. Most of the facilities will be "warm" high pressure or "cold" high pressure, both of which create safety concerns for Staff. Staff believes that the concern with testing the integrity of welds is at least equal to the concern presented by transmission pipeline and that for some of the piping, the high thermal stresses create additional stress further supporting testing.</p> | |
| <p>7. What is the operating pressure present in typical natural gas transmission pipelines for which 100 percent of new welds must be nondestructively tested?</p> | <p>For intrastate natural gas transmission facilities, under 49 CFR § 192.619, the maximum allowable operating pressure ("MAOP") varies based on the facility and is as low as 250 psi and as high as 837 psi.</p> | <p>Spectrum believes that the testing of natural gas transmission pipelines depends more on line location than operating pressure. 49 CFR Part 192, Subpart E addresses natural gas pipeline welding and includes requirements for nondestructive testing based on classes of locations and operating conditions (such as in 49 CFR § 192.241 and 49 CFR § 192.243(d)). In contrast, Rule 202(T) takes into account neither</p> | <p>Spectrum's response focuses on the federal requirements, which apply to interstate facilities. At an intrastate level, Arizona requires 100 percent nondestructive testing for all new welds for transmission facilities, regardless of conditions. (R14-5-202(S).)</p> | <p>The Commission believes that the comparable pressures to which transmission pipeline field welds and LNG facility pipeline field welds are exposed makes it reasonable and appropriate to require the same level of testing for each.</p> |

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| 8. What are the temperatures present in typical LNG pipeline and appurtenances used in the same manner as those at Desert Gas's LNG facility, and what impact do those temperatures have upon pipeline and weld materials? | Temperatures of the gas at an LNG plant typically range from 60° F down to -270° F (the temperature at which gas condenses into liquid, considered cryogenic). At an LNG plant like Desert Gas's LNG plant, turbo expanders reduce the temperature of gas to well below 0° F, but only a portion of the gas is condensed to liquid, and the remaining gas is recompressed, resulting in an increase in pressure and temperature before being injected back into the main gas stream. The wide range of pressures and temperatures places thermal loads on the piping and welds. Under 49 CFR § 193.2505, LNG operators must have written cool-down procedures to enable the facility to gradually begin operations to avoid placing excessive thermal stresses on pipeline and components. | class location nor percentage of specified minimum yield strength ("SMYS"). Spectrum's Desert Gas LNG facility has LNG pipeline with temperatures ranging from a high of 250° F to a low of -242° F and pressures ranging from a high of 1,000 psi to a low of 15 psi. But no single pipe experiences this range of temperatures or pressures. There are many separate stages of pressure and temperature at the plant, and the piping used for each location is appropriate for the conditions it experiences. Spectrum believes that Rule 202(T) addresses only "warm pipe welds" (above -20° F), so there is no question about the procedures for the lower temperature cryogenic piping. Because LNG cannot exist at -20° F, Rule 202(T) has nothing to do with cryogenic piping, and consideration of LNG or extremely low temperature conditions in this matter is not germane. | Staff agrees that no single pipe at Spectrum's facility must withstand the full range of pressure or temperature changes necessary in the cryogenic liquefaction process. Staff does not agree with Spectrum's assertion that Rule 202(T) applies only to "warm" pipe welds. Spectrum appears to believe, incorrectly, that Rule 202(T) is intended to correct an ambiguity in ASME 31.1 § 6.6.3.2. Staff has been unambiguous that the intent of the rule is to address Staff's safety concern that welds performed for the purpose of containing hazardous liquids at high pressure need to be tested to confirm the integrity of the weld, whether at a "warm" or "cold" temperature. The "cold" temperature supplies an additional mechanical stress. Because of this additional stress, it would be inappropriate to treat LNG facilities as less worthy of inspection than transmission pipeline for which there is already a 100-percent testing requirement. As with the transmission weld requirement in R14-5-202(S), Rule 202(T) elevates the requirement to be more stringent than that established by the ASME. | The Commission agrees with Staff that Rule 202(T) applies to all welds performed at an LNG facility on newly installed, replaced, or repaired pipeline or appurtenances, regardless of the temperature to which the pipeline is exposed. |
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| <p>9. What are the temperatures present in the typical natural gas transmission pipelines described in question 7, and what impact do those temperatures have upon pipeline and weld materials?</p> | <p>Temperatures in intrastate natural gas transmission facilities are generally around 60° F. Gas temperatures are usually higher downstream from compressor stations and lower at pressure reduction stations. Aboveground pipe undergoes some incidental thermal expansion and contraction due to the changing temperature of its surroundings.</p> | <p>Spectrum agrees with Staff's response and has no additional response at this time.</p> | <p>N/A</p> | <p>The Commission concurs with Staff's response</p> |
| <p>10. Why does Staff believe that it is not necessary to nondestructively test all welds made by a manufacturer of a prefabricated assembly being newly installed at an LNG facility (i.e., that it is only necessary to nondestructively test the welds made on site to connect the prefabricated assembly to the existing LNG facility pipeline and appurtenances)?</p> | <p>Pre-manufactured components are designed and manufactured to specific pressure and temperature ratings and are subject to component-specific testing requirements prescribed by 49 CFR Part 193 and NFPA 59A. The welding for factory manufactured components is conducted in a controlled environment, reducing variables that could adversely affect weld quality, such as temperature, pipe or appurtenance positioning, etc., and that cannot be controlled in a field environment. After construction, a component is also tested at the factory to ensure that it meets the design specifications and ratings. Provided that the manufacturer provides an LNG plant operator documentation stating that a component (including its welds) was tested and meets design requirements, the component's welds do not need additional</p> | <p>Spectrum agrees with Staff's response and has no additional response at this time.</p> | <p>N/A</p> | <p>The Commission concurs with Staff's response. While the Commission is aware that even a factory weld in a prefabricated unit can fail, the Commission believes that the welds performed on site pose a greater risk and thus merit nondestructive testing per Rule 202(T).</p> |

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| | nondestructive testing in the field. | Staff's experience in regulating this area is limited because Arizona is not an oil- and gas-producing state, and Arizona has no gas-processing facilities other than two small-scale LNG plants. Spectrum understands that the gas transmission pipeline facilities in Arizona were primarily installed to connect the producing regions in West Texas or the Rocky Mountains to the substantial energy market in California. These larger-scale facilities are significantly different than small-scale liquefiers such as Spectrum's operation. To determine the percentage of welds that must be tested for large interstate facilities, PHMSA takes into consideration the size of pipe, the SMYS, and the Class location of the pipeline and does not always require 100 percent x-ray testing. While Staff may be ahead of other states in implementing pipeline safety rules, it is PHMSA that has the expertise to examine the adequacy of current rules over LNG facilities. The Commission should participate in the PHMSA process to examine the regulation of LNG facilities instead of adopting Rule 202(T), which is unnecessary and will impose | The safety inquiry at issue in Rule 202(T) is whether a weld that must withstand specified stresses, such as operating pressures up to 1,000 psi, can withstand those stresses. The relevant experience is welding skill, not gas or petroleum production operations. Staff's knowledge of welds is guided by multiple qualified welders within Staff, with decades (possibly centuries) of cumulative experience. Staff believes that it has sufficient expertise to understand the relevant issues relating to the quality of welds. Staff's experience is relied upon by federal regulators. Staff's Pipeline Safety Program members have industry experience, are federal safety inspectors, and must receive continuous federally sponsored training. Staff's inspectors have and continue to serve as PHMSA associate instructors for PHMSA's Training and Qualification Division, which is responsible for training state and federal inspectors. Staff's inspectors maintain individual training that exceeds the average training maintained by federal inspectors. Additionally, NAPSAR was until recently chaired by the Supervisor of Staff's Pipeline Program, Robert | The Commission agrees with Staff's statements regarding the experience and expertise of Pipeline Safety Program personnel and their involvement with PHMSA trainings. The Commission also agrees, as stated previously, that federal regulations do not provide a maximum standard for state pipeline safety regulation and that the Commission need not wait for PHMSA to conclude its process before permanently adopting Rule 202(T). |
| 11. To Staff's knowledge, has any other U.S. state, any other jurisdictional governmental entity, or any recognized industry standard-setting entity considered and decided not to adopt either a requirement substantially similar to that in Rule 202(T) or a requirement more stringent than the requirement in 49 CFR 193.213(j)(3)? If so, please identify each such state or entity and provide a copy of any documentation regarding the entity's consideration and decision not to adopt the requirement. | Staff is not aware of whether any other U.S. state, other jurisdictional governmental entity, or recognized industry standard-setting entity has considered but refrained from adopting a requirement substantially similar to that in Rule 202(T). In Staff's experience, the Commission's Pipeline Safety Program is typically ahead of other states. | | | |

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| | | substantial additional costs without significant benefit and which interferes with measures already being undertaken by Spectrum by imposing significant additional cost. | Miller. [Mr. Miller retired in May 2016.] Staff's views are relied upon by federal regulators, and Staff is qualified to promote pipeline safety rule enhancements. States are not bound to treat federal regulations as a ceiling on the level of regulation in pipeline safety matters, and the PHMSA process will address pipeline operations regulated by PHMSA rather than the intrastate operations that are regulated by states. Staff does not believe it necessary or appropriate to defer adoption of Rule 202(T) until PHMSA's rulemaking process concludes. | |
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EXHIBIT 4

**ECONOMIC IMPACT STATEMENT
PER A.R.S. § 41-1055**

1. **BRIEF DESCRIPTION:** These amendments will amend rules R14-5-202, R14-5-203, R14-5-204, R-14-5-205 and R14-5-207. The proposed amendments are designed to update the Arizona Corporation Commission Pipeline Safety rules for conformity with the most current requirements of the Code of Federal Regulations (CFR), Title 49, Parts 40, 191, 192, except I(A)(2) and (3) of Appendix D to Part 192, 193, 195 (except 195.1(b)(2), (3), and (4)) and 199 (March 6, 2015) and improve clarity.

2. **NEED:** The Commission's Pipeline Safety Section, through its participation in the Federal Department of Transportation pipeline safety program, receives an annual grant from the Pipeline and Hazardous Materials Safety Administration's Federal Office to offset the Pipeline Safety Section's operational cost. Additionally, the Pipeline Safety Section has been granted agent status allowing it to enforce the Federal Pipeline Safety Standards. To maintain that status and to continue to receive grant monies the Commission must, pursuant to the Natural Gas Pipeline Safety Act and the Hazardous Liquid Pipeline Safety Act, adopt and keep current with the Federal Pipeline Safety Standards. The Commission believes that through the adoption and incorporation by reference of CFR Title 49 updates, the rules will be consistent with the Federal Regulations and will enhance public safety which will be in the best interest of all citizens in the State of Arizona.

3. **AFFECTED CLASSES OF PERSONS:**

- A. Operators of master meter gas distribution systems.
- B. Intrastate operators of natural gas and other gas pipelines.
- C. Intrastate operators of hazardous liquid pipelines.

4. **RULE IMPACT ON AFFECTED CLASSES OF PERSONS:**

- A. There will be no impact on master meter system operators if they are already complying with the Federal Pipeline Safety Regulations.
- B. There will be no impact on operators of natural gas or other gas systems, other than operators of liquefied natural gas ("LNG") facilities, if they are already complying with the Federal Pipeline Safety Regulations. Operators of LNG facilities may experience increased testing costs when welding is performed, although the additional costs are expected to be minimal as welding is a non-recurring activity. The increased costs will only occur if the LNG facility operator is not already ensuring that nondestructive testing is completed for each weld performed on newly installed, replaced, or repaired pipeline or appurtenances.
- C. There will be no impact on operators of hazardous liquid pipelines if they are already complying with the Federal Pipeline Safety Regulations.

5. **COST AND BENEFITS TO THE AGENCY:** The proposed amendments to the existing rules will have a minimal cost effect on the Commission and will have no impact on other state agencies. The Commission will benefit by maintaining agent status in

keeping current with the Federal Pipeline Safety Standards. The Commission believes that by amending the existing rules, the rules will be consistent with the Federal Regulations and will enhance public safety which will be in the best interest of all citizens in the State of Arizona.

6. **COST AND BENEFITS TO POLITICAL SUBDIVISIONS:** For those political subdivisions that are operators of intrastate pipelines or master meter operators, there will be little impact to political subdivisions if they are already complying with the Federal Pipeline Safety Regulations.
7. **COST AND BENEFITS TO PRIVATE PERSONS:** The proposed amendments to the existing rules will have no effect upon private persons or users of the gas service provided by regulated public utilities as they presently are required to be in compliance with all standards, but, this will benefit consumers, users and the general public by the operation and maintenance of a safe pipeline system.
8. **COST AND BENEFITS TO CONSUMERS OR USERS OF ANY PRODUCT OR SERVICE IN THE IMPLEMENTATION OF THE NEW RULES:** The proposed amendments to the existing rules will have no effect upon consumers or users of the gas service provided by regulated public utilities as they presently are required to be in compliance with all standards, but, this will benefit consumers, users and the general public by the operation and maintenance of a safe pipeline system.

9. **LESS COSTLY OR INTRUSIVE METHODS:** The amendments to the rules are the least costly method for obtaining compliance with the long standing minimum safety standards. The rules do not impose additional standards. There is no less intrusive method.
10. **ALTERNATIVE METHODS CONSIDERED:** There are no alternative methods available that ensure the public health and safety to the degree the proposed amendments ensure.